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Under the Child and Family Services Act
Volume 3
and
Volume 4

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

THE CHILD AND FAMILY SERVICES ACT TRAINING
HANDBOOK (MARCH 1985) HAS BEEN REVISED
AND CONSOLIDATED WITH REGULATIONS
INTO THE FOLLOWING VOLUME:

VOLUME 1 FRONT-LINE SERVICE DELIVERY

VOLUME 3

VOLUME 2 HUMAN AND ASSETS MANAGEMENT STAFF OF
PRIVATE PROVIDERS

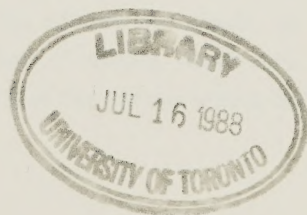
CHILD PROTECTION


UNDER

VOLUME 4 THE CHILD AND FAMILY SERVICES ACT

VOLUME 5 SERVICES TO YOUNG OFFENDERS

VOLUME 6 APPENDIX





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FOREWORD

THE CHILD AND FAMILY SERVICES ACT TRAINING
HANDBOOK (MARCH 1985) HAS BEEN REVISED
AND CONSOLIDATED WITH REGULATIONS
INTO THE FOLLOWING VOLUMES.

VOLUME 1 FRONT-LINE SERVICE DELIVERY

**VOLUME 2 BOARDS AND SENIOR MANAGEMENT STAFF OF
SERVICE PROVIDERS**

VOLUME 3 CHILD PROTECTION

VOLUME 4 CHILD ABUSE REPORTING

VOLUME 5 SERVICES TO YOUNG OFFENDERS

VOLUME 6 ADOPTION

FOREWORD

The Ministry of Community and Social Services is pleased to produce this revised and consolidated edition of the Child and Family Services Act Training Handbook. Consisting of six volumes (Volumes 3 and 4 being bound together), each is designed to assist service providers in the application of the new Act. The series presents the final revision of the extensive Training Handbook produced during the training program prior to proclamation.

Four of the volumes are complete in themselves and cover the whole of the topic named in the title. Two of the volumes, namely "Front-Line Service Delivery" and "Boards and Senior Management Staff of Service Providers", are more interrelated and there is overlap of subject matter so that material on a specific topic may be found in either one or both of the volumes. The reader may therefore need to consult the two volumes to obtain the complete information.

The principles of the Act are set out in both Volumes 1 and 2. The philosophy behind the Act is fundamental to comprehending the entire Act and readers of all volumes should ensure that they have a thorough understanding of these principles.

This edition is intended as an adjunct and complement to other Ministry publications and manuals that are now available or that will be available in the future. **It is important to remember that the content represents the statute, regulations and other information at the time of writing. Much work on implementation is still in progress and some parts of the Act are still to be proclaimed.**

December, 1985

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CHILD PROTECTION UNDER PART III

INTRODUCTION

Although children's aid societies share with all service providers the rights and responsibilities recognized by the Child and Family Services Act, the Act entrusts societies with special rights and responsibilities for children in need of protection from their parents or care givers.

That is the focus of this volume.

1. "CHILDREN" ENTITLED TO CHILD PROTECTION INTERVENTION

C.F.S.A. s.37(1)(a); 43(3)

(1) Age

The Child and Family Services Act extends the upper age limit of children who are entitled to protective intervention. The general rule is that children who are actually or apparently under 16 years of age may be brought before the child protection court in accordance with Part III of the Act.

Predecessor legislation required an order of the child protection court to maintain jurisdiction over the child who had reached 16 years of age. Under the new Act the court has jurisdiction to hear and dispose of a protection application even if the child has passed his 16th birthday, if the child was either apprehended or a protection application filed on his behalf before his 16th birthday.

(2) The Need for Protection

C.F.S.A. s.37(2)

Generally

The definition of "need of protection" in the Child and Family Services Act is the first substantial amendment to that definition in Ontario's child welfare law in 20 years. One of the recognized deficiencies of predecessor legislation was that it did not identify the specific harms from which the law required the child to be protected. This in turn created concern both for the child protection worker whose task was to intervene on the child's behalf, and for the community whose task was to interpret the point at which acceptable care deteriorated to the unacceptable. It also made it difficult to achieve an appropriate balance between mandatory intervention by a children's aid society and the family's right to raise its children as it saw fit, given our society's broad tolerance of varying approaches to raising a child.

The new definition focuses on an act or omission of either a parent or the person who has charge of the child that creates a present or potential risk of harm to the child.

Thus, the Child and Family Services Act considers a child to be in need of protection in any of the following circumstances:

- a. the child has suffered physical harm, either inflicted by the person having charge of the child or caused by that person's failure to adequately:-

- (i) care and provide for the child;
- (ii) supervise the child;
- (iii) protect the child; **C.F.S.A. s.37(2)(a)**

- b. there is a substantial risk that the child will suffer physical harm inflicted or caused as described in the preceeding clause (a);

C.F.S.A. s.37(2)(b)

- c. the child has been sexually molested or sexually exploited by the person having charge of the child, or by another person where the person having charge of the child:

- (i) knows or should know of the possibility of sexual molestation or sexual exploitation; and
- (ii) fails to protect the child; **C.F.S.A. s.37(2)(c)**

- d. there is a substantial risk that the child will be sexually molested or sexually exploited as described in the preceding clause (d);

C.F.S.A. s.37(2)(c)

- e. the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child:

- (i) does not provide the treatment;
- (ii) refuses to provide the treatment;
- (iii) is unavailable to consent to treatment; or
- (iv) unable to consent to the treatment; **C.F.S.A. s.37(2)(e)**

- f. the child has suffered emotional harm, demonstrated by:

- (i) severe anxiety;
- (ii) severe depression;
- (iii) severe withdrawal; or,

- (iv) severe self-destructive or aggressive behaviour, and the child's parent or the person having charge of the child:
 - . does not provide services or treatment to remedy or alleviate the harm;
 - . refuses services or treatment to remedy or alleviate the harm;
 - . is unavailable to consent to services or treatment to remedy or alleviate the harm;
 - . is unable to consent to services or treatment to remedy or alleviate the harm; **C.F.S.A. s.37(2)(f)**
- g. there is a substantial risk that the child will suffer emotional harm of the kind described in the preceding clause (f), and the child's parent or the person having charge of the child:
 - (i) does not provide services or treatment to prevent the harm;
 - (ii) refuses services or treatment to remedy or alleviate the harm;
 - (iii) is unavailable to consent to services or treatment to remedy or alleviate the harm;
 - (iv) is unable to consent to services or treatment to remedy or alleviate the harm; **C.F.S.A. s.37(2)(g)**
- h. the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development, and the child's parent or the person having charge of the child either:
 - (i) does not provide treatment to remedy or alleviate the condition;
 - (ii) refuses to do so;
 - (iii) is unavailable to consent to treatment; or,
 - (iv) is unable to consent to treatment; **C.F.S.A. s.37(2)(h)**
- i. the child is in any of the following circumstances:
 - (i) has been abandoned;
 - (ii) the child's parent has died;
 - (iii) the child's parent is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody; or,

- (iv) the child is in a residential placement and the parent refuses, is unable or is unwilling to resume the child's care and custody.

C.F.S.A. s.37(2)(i)

A "residential placement" under the Child and Family Services Act means boarding, lodging and associated supervisory, sheltered or group care provided for the child away from the home of his parent. It includes foster care;

C.F.S.A. s.3(1) 25

- j. the child is under 12 years of age and has killed or seriously injured another person or caused serious damage to another person's property. Services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child either:

- (i) does not provide those services or treatment;
- (ii) refuses to do so; or,
- (iii) is unavailable to consent to those services or treatment;
- (iv) is unable to consent to those services or treatment;

C.F.S.A. s.37(2)(j)

- k. the child is under 12 years of age and has on more than one occasion injured another person or caused loss or damage to another person's property, either:

- (i) with the encouragement of the person having charge of the child;
- (ii) because of that person's failure to supervise the child adequately;
- or
- (iii) because of that person's inability to supervise the child adequately;

C.F.S.A. s.37(2)(k)

- l. the child's parent is unable to care for him and the children's aid society brings the matter of his need for protection before the court with the consent of both the parent and the child, if he is 12 years of age or older.

C.F.S.A. s.37(2)(l)

The requirement of the older child's consent is consistent with the overall thrust of the Act to give the older child a tangible right to participate in

decisions that affect his future care. If the child refuses consent, the ground for his protection must be found within one of the other enumerations set out in the Act.

The new definition has given rise to some reactions that it will not be possible under the new legislation for police and child protection workers to apprehend runaway children or children who are working as prostitutes. It is the Ministry position that this is not the case and the Deputy Minister has written to regional directors and area managers explaining this position. A copy is provided as Appendix 21.

2. DEFINITION OF A CHILD'S "EXTENDED FAMILY" C.F.S.A. s.37(1)(c)

Although predecessor legislation did not identify the persons who encompass the child's extended family, societies and courts routinely considered the proposed plans for the child's care presented by any member of the child's extended family who came forward to present an alternative to foster care for the child. The Child and Family Services Act endorses this practice, and specifies that the child's extended family is any person to whom the child is related by blood, marriage or adoption.

3. "LEAST RESTRICTIVE ALTERNATIVE" SCHEME FOR INTERVENTION

(1) Generally

The Child and Family Services Act provides a clearer framework than that offered by predecessor legislation for child protection workers required to choose the most appropriate means of initiating child protection court action on a child's behalf.

Predecessor legislation required a children's aid society to activate its protective intervention by either apprehending the child and making application to the court within 5 days of that apprehension, or applying to the court for an order to produce. This latter order compelled the person who had charge of the child to produce him before the child welfare court for a determination of his need for protection.

The Child and Family Services Act abolishes the order to produce mechanism, except for applications to the court instituted by third parties, and enacts a mechanism for court action that respects the least restrictive alternative philosophy to guide protective intervention.

The following 3 mechanisms are available to the protection worker:

- a. the filing of an application;
- b. warrant to apprehend a child;
- c. apprehensions without warrant.

(2) Filing of a Protection Application

C.F.S.A. s.40(1)

Under predecessor legislation, the least restrictive method for bringing the child before the court was the order to produce. The least restrictive method under the new Act is a protection application served on the parties and filed with the child protection court. This method of initiating child protection proceedings parallels the usual manner of commencing civil proceedings in a court of law. It is intended for situations in which a child protection worker believes that the child is in need of protection and that he cannot be protected adequately without court-ordered intervention. In this situation, the child's need for protection is not so immediate that it warrants an immediate apprehension, with or without the authority of a warrant.

(3) Warrant to Apprehend a Child

C.F.S.A. s.40(2)

A more intrusive form of intervention is the warrant to apprehend a child. A protection worker who believes that a child's need for protection requires his apprehension, but that there is sufficient time to obtain a warrant to apprehend, uses this alternative provided by the Child and Family Services Act.

Under predecessor legislation a protection worker seeking a warrant to apprehend a child was required to swear an information setting out reasonable and probable grounds to believe that the child was in need of protection or alternatively, that a child actually or apparently under 16 years of age had left or had been removed from the society's lawful care and custody without

the society's consent. The new Act continues those criteria and requires in addition reasonable and probable grounds to believe that a course of action less restrictive than the child's apprehension is either not available or will not protect the child adequately. This new component formalizes the best of social work practice and establishes a uniform requirement throughout the province.

The statute authorizes the child protection worker, as did predecessor legislation, to enter premises, by force if necessary, and to search for and remove the child to a place of safety.

The power of entry is to be exercised in accordance with any provisions set out in the regulations.

It is not necessary to describe the child by name in the information or the warrant, nor is it necessary to provide an address, if that data is not known.

(4) Apprehension Without Warrant

C.F.S.A. s.40(6)

The Child and Family Services Act preserves the authority to apprehend a child without a warrant, and gives the protection worker more certain direction to guide the exercise of that discretion. The direction chosen by the Child and Family Services Act formalizes the preferred practice of children's aid society front-line staff; specifically, apprehension without a warrant in situations where there is no reasonable alternative available to protect the child's health or safety. Under the new Act, the worker must satisfy himself:

- a. that there are reasonable and probable grounds to believe that the child is in need of protection as defined by the Act; or alternatively,
- b. that there are reasonable and probable grounds to believe that a child actually or apparently under 16 years of age has left or been removed from a society's lawful care and custody without its consent; and
- c. that there would be a substantial risk to the child's health or safety, during the time required to initiate an application with the court or to obtain a warrant.

The child protection worker may ask the police to assist in the apprehension if necessary.

4. SOCIETY'S DISCRETION TO AUTHORIZE MEDICAL EXAMINATION OF THE CHILD

C.F.S.A. s.40(8)

Predecessor law was unclear in its delineation of the "powers" that flowed from protective intervention on a child's behalf. The authority to consent to the medical examination of a child historically rested with the child's parent. As a result, some courts ruled that the society should not undertake responsibility for medical examination of a child in the absence of an interim order of custody in the society's favour, while other courts ruled that the society assumes responsibility for the child from the moment of apprehension and that authority to consent is not contingent upon a court order. Thus, if a medical examination were reasonable in the circumstances, then the society would not only be free to consent to it as the child's "acting" parent, but vulnerable to criticism if it did not.

The Child and Family Services Act adopts the latter approach and stipulates that a child protection worker who apprehends a child, with or without a warrant, may authorize the child's medical examination where a parent's consent would otherwise be required. This is a particularly important authority for the protection worker who has intervened because of suspected child abuse. It also responds to the concern of the medical profession that predecessor law did not give clear authority to infringe the parent's traditional right.

Circumstances in which protection workers should authorize medical examination will depend on the facts of each case. In general, the worker should consider medical examination of a child where it is essential to the society's investigation into and assessment of a child's alleged need for protection, as that need is defined by the new Act. It is particularly advisable in situations of alleged physical harm to a child, where injuries may be internal.

5. THE "PLACE OF SAFETY"

C.F.S.A. s.37(1)(e)

(1) Generally

The Child and Family Services Act continues to recognize foster homes and hospitals as "places of safety" for children allegedly in need of protection. The Act also gives authority to a director to specify certain other resources or classes of resources as places of safety. This authority has been delegated to a local director of a children's aid society.

(2) Exclusion of Secure Detention and Secure Custody Resources

Predecessor legislation excluded training schools as places of safety. Under the Child and Family Services Act places of secure custody and secure temporary detention are similarly excluded. The Act restricts the availability of these resources to young persons who have come into conflict with the law. Certain young offender settings (i.e. open detention and open custody) may be designated as places of safety for children who cannot be contained in a less restrictive resource.

(3) Placement in an Open Temporary Detention Resource

C.F.S.A. ss.40(9), 42(2), 47(2)

If a child protection worker has reasonable and probable grounds to believe that no less restrictive course of action is feasible in order to detain a particular child, he may transport the child to a place of open temporary detention that has been designated as a place of safety.

These facilities are the new legislation's equivalent of the observation and detention homes which were designated under predecessor legislation as places of safety to provide shelter for children who could not be contained in a foster or group home residence. Restrictions imposed on the liberty of children in open detention facilities are similar to restrictions available in the old observation and detention homes. The restrictions do not, however, provide absolute control over a child's determination to run.

The current process for admission to a place of open temporary detention continues the essentials of predecessor legislation, as follows:

- a. The superintendent of the resource may refuse to admit the child until a court order is obtained.

In such a case, it is the responsibility of the protection worker who has apprehended the child to take the child before a judge of the Provincial Court (Family Division) or the Unified Family Court for a hearing into the child's need for such detention. It is also the protection worker's responsibility to notify a parent of the time and place for the hearing, or to make a reasonable effort to do so.

The matter of the child's detention must be brought before the court for a hearing within 24 hours after the child is brought to the place of open temporary detention or as soon as practicable thereafter. Predecessor legislation required the child to be brought before the court as soon as practicable after the detention.

- b. If the superintendent of the detention resource does admit the child without a court order, it is the responsibility of the superintendent to take the child before a judge within 24 hours or as soon as practicable after the commencement of the detention;

In such cases, it is the responsibility of the superintendent to make a reasonable effort to notify a parent of the child and the children's aid society of the time and place of the hearing.

Under the Child and Family Services Act the court must determine, on the basis of evidence placed before it, whether continued detention remains the least restrictive alternative for the child in the circumstances. This formalizes the test historically employed by the court. Where the court is satisfied that no less restrictive course of action is feasible, it may order that the child remain in the place of open temporary detention for a period or periods not exceeding an aggregate of 30 days and then be returned to the care and custody of the society.

Where the court is not so satisfied, it has any of the following orders available to it:

- a. to order that the child be discharged from the place of open temporary detention and returned to the care and custody of the society; or,
- b. to make an order for temporary care and custody of the child pending full hearing of the protection application and providing that the child:
 - (i) remain in or be returned to the care and custody of the person who had charge of the child immediately before the society's intervention;
 - (ii) remain in or be returned to the care and custody of that person subject to the society's supervision and on such reasonable terms and conditions relating to the child's supervision as the court considers appropriate;
 - (iii) be placed in the care and custody of a person other than the person who had charge of the child immediately before the society's intervention, with the consent of that other person, subject to the society's supervision and on such reasonable terms and conditions relating to the child's supervision as the court considers appropriate; or
 - (iv) remain or be placed in the care and custody of the society, but not be placed in,
 - . a place of secure custody as defined in Part IV (Young Offenders), or
 - . a place of open temporary detention as defined in that Part IV that has not been designated as a place of safety.

The Child and Family Services Act requires the court to give preference to an order that the child be returned, with or without society supervision, to the custody of the person who had charge of him immediately before the society's intervention, unless the court is satisfied that there are reasonable and probable grounds to believe that there is a substantial risk to the child's health or safety and that the child cannot be protected adequately through that order.

In this manner, the Child and Family Services Act preserves the requirement of predecessor legislation that a court review the child's need for such restrictions on his liberty.

(4) Apprehension of the Child Who Runs from the Open Temporary Detention Resource C.F.S.A. s.40(13)

The Child and Family Services Act empowers any of the following persons to apprehend without a warrant, a child who has left the open temporary detention resource without the consent of either the children's aid society responsible for the child or the person in charge of the resource:

- a. a peace officer (which includes a probation officer and a police officer);
- b. the person in charge of of open temporary detention;
- c. a delegate of the person in charge of the open temporary detention resource.

Any of these persons may enter any premises without a warrant, if he believes on reasonable and probable grounds that the child is there and may search for and remove the child, using force if necessary. The power of entry must be exercised in accordance with any regulations made under the Child and Family Services Act.

It is the responsibility of the person who apprehends the runaway to:

- a. take the child to a place of safety to be detained there until he can be returned to the place of open temporary detention from which he has run; or
- b. arrange for the child to be returned to the place of open temporary detention from which he has run; or
- c. return the child to the place of open temporary detention from which he has run.

6. INDEPENDENT LEGAL REPRESENTATION FOR THE CHILD**C.F.S.A. s.38**

The child may have legal representation at any stage of a court proceeding initiated on his behalf.

The Child and Family Services Act continues the duty imposed on the court by predecessor legislation to determine before the hearing of the protection application whether legal representation is desirable to protect the child's interests, and if so, to direct that legal representation be provided. This determination is to be made as soon as practicable after the commencement of the application and may be considered at any later stage of that protection proceeding.

Unless the court is satisfied that the child's interests are otherwise adequately protected, the Child and Family Services Act considers legal representation desirable for the following children:

- a. where there is a difference of views between child and parent or between child and children's aid society and the society's recommendation to the court is that the child be removed from a person's care or be made a society or Crown ward;
- b. where the child is in the care of a children's aid society and no parent appears before the court;
- c. where the child is in the actual care of a society and is alleged to be in need of protection for any of the following reasons:
 - (i) child has suffered physical harm, inflicted by the person who has care of him, or caused by that person's failure to protect the child adequately;
 - (ii) the child has been sexually molested or exploited by the person who has charge of him, or by another person where the person in charge knows of the possibility of sexual molestation or exploitation or should know, and fails to protect the child;

- (iii) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal or self-destructive or aggressive behaviour and the parent or person in charge of the child either does not provide services or treatment to remedy or alleviate the harm, refuses to do so or is unable or unavailable to consent to those services;
- (iv) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development, and the child's parent or the person having charge of the child either does not provide treatment to remedy or alleviate the condition, refuses to do so, or is unavailable or unable to consent to treatment;
- (v) the child is not permitted to be present at the hearing.

Separate legal representation for the child continues to be a critical aid to a child who may be required to testify in criminal proceedings against an alleged abuser.

The court is also directed, as it was under predecessor legislation, to take into account the child's views, if they can be reasonably ascertained.

7. INDEPENDENT LEGAL REPRESENTATION **FOR PARENTS UNDER AGE 18**

C.F.S.A. s.38(5)

The Child and Family Services Act preserves the requirement of predecessor law that parents under age 18 be represented by the Official Guardian, but allows the court to order otherwise.

An order otherwise may suggest the appointment of a person other than the Official Guardian, or indeed, permit the court to order that representation is not required at all.

8. THE 5-DAY RULE**C.F.S.A. s.42(1)**

As soon as practicable and no later than 5 days after the child has been apprehended or a homemaker placed on the premises to care for the child, a protection worker must take one of the following courses of action on the child's behalf:

- a. return the child to the person who had charge of him before the society's protective intervention, or alternatively, to a person entitled to custody under a custody order enforceable in Ontario;
- b. negotiate a temporary care agreement with the child's parent;
- c. bring the matter of the child's alleged need for protection before the court for a hearing.

9. "PARENTS" FOR THE PURPOSES OF PART III**C.F.S.A. ss.37(1)d; 3(2)****(1) Generally**

The individuals listed below have "parent" status under Part III of the Child and Family Services Act:

- a. natural mother; **C.F.S.A. s.37(1)(d)(i)**
- b. a male married to the mother at time of the child's birth, unless it is proven on a balance of probabilities that the individual is not the child's biological father; **C.F.S.A. s.37(1)(d)(ii) & C.L.R.A. s.8(1)1**
- c. a male who is married to the child's mother and who dies during her pregnancy (i.e. within the 300-day period preceding the child's birth), unless it is proven on a balance of probabilities that the individual is not the child's biological father; (In this case, the requirement for notice has been superceded by the death, and the court should be so advised at the commencement of the hearing); **C.F.S.A. s.37(1)(d)(ii) & C.L.R.A. s.8(1)2**

- d. a male who is married to the child's mother, and whose marriage to her is legally annulled within the 300-day period preceding the child's birth, unless it is proven on a balance of probabilities that this individual is not the child's biological father; **C.F.S.A. s.37(1)(d)(ii) & C.L.R.A. s.8(1)2**

- e. a male who is married to the child's mother, and whose marriage to her is severed by a decree nisi if divorce was granted within the 300-day period preceding the child's birth, unless it is proven on a balance of probabilities that this individual is not the child's biological father;
C.F.S.A. s.37(1)(d)(ii). & C.L.R.A. s.8(1)2

- f. a male who is cohabiting in a relationship of some permanence with the mother at the time of the child's birth, unless it is proven on a balance of probabilities that this individual is not the child's biological father.
C.F.S.A. s.37(1)(d)(ii) & C.L.R.A. s.8(1)4

- g. a male separated from the mother with whom he has cohabited in a relationship of some permanence, and the child born within 300 days of their separation, unless it is proven on a balance of probabilities that this individual is not the child's biological father;
C.F.S.A. s.37(1)(d)(ii) & C.L.R.A. s.8(1)4

- h. a male who together with the child's mother has requested registration or has indeed registered the child's birth with the provincial Registrar-General under the provisions of vital statistics legislation in force with any Canadian province or territory, unless it is proven on a balance of probabilities that this individual is not the child's biological father;
C.F.S.A. s.37(1)(d)(ii), C.L.R.A. s.6(8) & V.S.A. s.6(5)(8)

- i. a male who has been recognized in his lifetime by a Canadian court to be the child's father, unless it is proven on a balance of probabilities that he is not the child's biological father;
C.F.S.A. s.37(1)(d)(ii) & C.L.R.A. s.8(1)6

- j. an individual who has lawful custody of the child; **C.F.S.A. s.37(1)(d)(iii)**

- k. an individual who has demonstrated a settled intention to treat the child as a child of his or her family during the twelve months before

intervention took place under Part III of the Child and Family Services Act;
C.F.S.A. s.37(1)(d)(iv)

- l. an individual who has acknowledged parentage of the child during the twelve months before intervention under Part III of the Act and provided for the child's support within that time period. (The Child and Family Services Act has removed the requirement of predecessor legislation that this acknowledgement be made to a children's aid society);
C.F.S.A. s.37(1)(d)(iv)
- m. an individual, male or female, who has custody, rights of access or who is required to provide support for the child either by court order or by the terms of a written agreement;
C.F.S.A. s.37(1)(d)(v)
- n. a male individual who has filed a statutory declaration with the Ontario Registrar General as provided by section 12 of the Children's Law Reform Act, affirming that he is the child's natural father; **C.F.S.A. s.37(1)(d)(vi)**

Persons who come within the Act's definition of "parent" are entitled to formal notice of any court proceeding under Part III of the Act. Parents are also entitled to fully participate in the court proceeding.

Reference to a child's "parent", unless noted otherwise in the Act, is to be interpreted as follows:

- a. both parents, where both have custody of the child;
- b. one parent, where that parent has lawful custody of the child or the other parent is unavailable or unable to act; or
- c. another individual, where that individual has lawful custody of the child.

C.F.S.A. s.3(2)

(2) Non-qualifying Natural Fathers

If the child's natural father does not come within any of the criteria outlined, he does not qualify as a "parent" under Part III of the Act. The applicant

seeks a ruling from the court, based on facts sworn by the child's mother, that the natural father does not have "parent" status for the purposes of Part III of the Act.

(3) Exclusion of Foster Parents

Foster parents continue to be excluded from the definition of "parent" under the Act, but take the benefit of certain other provisions of the Act designed to encourage their involvement in the plan for the child's care.

(4) What Constitutes a "Relationship of Some Permanence"

A male who is cohabiting with the child's mother in a relationship of some permanence at the time of the child's birth is presumed in law to be the child's father unless it is shown on a balance of probabilities that he is not.

A "relationship of some permanence" is not defined by the Child and Family Services Act or the Children's Law Reform Act. Ordinary dictionary definition characterizes what is "permanent" as lasting, intended to continue indefinitely without change. It is synonymous with stability and stands in contrast to the casual or temporary. It is suggested, then, that the society explore with the child's mother:

- a. whether she and the male individual (identified or not identified) were cohabiting at the time of the child's birth, i.e., living together as husband and wife. Cohabitation usually implies sexual intercourse and is applied especially to those not legally married; and
- b. the extent to which that cohabitation has some stability to it, as contrasted with the more casual or intermittent relationship.

(5) What Constitutes "Lawful Custody"

The Child and Family Services Act stipulates that an individual who has "lawful custody" of the child is a "parent" entitled to formal notice of court proceedings initiated under Part III of the Act. Predecessor legislation tied this individual's entitlement to notice to a guardian appointed at law.

The change brings the Act's phraseology into line with the custody and guardianship distinctions set out in the Children's Law Reform Act. Since the enactment of the Children's Law Reform Act in 1980, "guardianship" has been reserved to persons appointed to manage the property of a child. Responsibility for, and care of, the "person" of the child is encompassed in the phrase "custody".

10. REQUIREMENT FOR A FORMAL HEARING

C.F.S.A. s.43; 3(1) 21

The Child and Family Services Act preserves the requirement of predecessor legislation that the court hold a formal hearing to determine the child's alleged need of protection, and that it make one of the orders permitted by the new Act. The Act defines "order" to include the court's refusal to make an order.

11. CLEARER DIRECTION GOVERNING THE PLACE OF THE HEARING

C.F.S.A. s.44(2)(3)

(1) Generally

The Child and Family Services Act specifies that the hearing must be held in the territorial jurisdiction in which the child ordinarily resides, except in the following circumstances:

- a. where the child is before the court as a result of an apprehension, the hearing must be held in the territorial jurisdiction from which the child was apprehended;
- b. where the child is a society or Crown ward, the hearing must be held in the territorial jurisdiction of the society responsible for the child;
- c. where the child is the subject of an order of society supervision, the hearing may be held either in the society's territorial jurisdiction or in the jurisdiction where the child is resident with the person who has charge of him under the supervision order.

Territorial jurisdiction is defined by the Child and Family Services Act to mean the territorial jurisdiction of a children's aid society.

The Child and Family Services Act prohibits the making of an order that affects a children's aid society if the society does not have jurisdiction in the county or district in which the court sits.

(2) Transfer of the Proceeding to Another County or District

C.F.S.A. s.44(3)

The Child and Family Services Act preserves the court's discretion to order the proceeding transferred to another territorial jurisdiction and continued as if it had been commenced there, if the court is satisfied that it is more convenient to hold the hearing in the alternate territorial jurisdiction.

The court may be asked for this order at any stage of a proceeding.

12. RIGHTS OF PARTICIPATION IN THE COURT PROCEEDING

(1) Persons Who Have Cared for the Child for 6 Continuous Months

C.F.S.A. s.39(3)

Predecessor legislation gave foster parents a limited right to participate in child protection proceedings undertaken on behalf of a child, if the foster parent had cared for the child for at least 6 continuous months prior to the court application.

The Child and Family Services Act extends this entitlement, specifying that any person, including a foster parent, who has been caring for the child continuously during the 6 months immediately before the hearing:

- a. is entitled to the same notice of the court application as a party to the hearing;
- b. may be present at the hearing;
- c. may be represented by a lawyer; and

d. may make submissions to the court at the hearing.

If the person wishes to participate more fully in the hearing, he must seek the court's permission. Such person is a "party" to the proceeding only if the court specifically gives that status.

(2) The Child

C.F.S.A. s.39(4)

Inclusion of the Child Over Age 12 in the Court Proceeding

Predecessor law stipulated that the child 10 years and older was entitled to formal notice of a application initiated on his behalf, and entitled to be present at the hearing. The Child and Family Services Act requires notice of the application only to children 12 years of age and over. The higher age level is consistent with other provisions of the Child and Family Services Act that strike age 12 as the most appropriate age to give certain rights and responsibilities to children.

The court retains its discretion to exclude the child from both notice of and presence at the hearing, if satisfied that the effect of the hearing would be injurious to the child's emotional health. Obligation for satisfying this test rests with the party who does not wish the child involved in the court proceeding.

Exclusion of the Child Under Age 12 from the Court Proceeding

C.F.S.A. s.39(5)

As a general rule, the child under age 12 is not entitled to receive formal notice of an application made to the court on his behalf or to be present at the hearing of the application.

A party who wishes the child present at the hearing must satisfy the court that the child:

- a. is capable of understanding the hearing, and
- b. will not suffer emotional harm by being present at the hearing.

This was also the test dictated by predecessor legislation. If so satisfied, the court may order that the child receive formal notice of the proceeding and that he be entitled to be present at the hearing.

(3) Persons Who Have Party Status

C.F.S.A. s.39(3)(6)

Generally

Unlike its predecessor legislation, the Child and Family Services Act specifically sets out the classes of persons who have "party" status in a child protection proceeding. "Party" status accords one certain rights and entails certain responsibilities with respect to the court action, including:

- a. the right to a formal notice of the proceeding;
- b. the right to cross-examine witnesses presented by other parties;
- c. the right to call one's own witnesses;
- d. right to full disclosure from the other parties of the case that they intend to put before the court;
- e. the obligation to give full disclosure to the other parties;
- f. liability for costs of the other parties, if the court so orders;

The "Parties" to a Child Protection Proceeding

C.F.S.A. s.39(1)(2)

The Child and Family Services Act gives party status to:

- a. the applicant;
- b. the children's aid society having jurisdiction in the matter;
- c. any person who qualifies as a "parent";
- d. where the child is an Indian, or native person, a representative chosen by the child's band or native community;

e. a Ministry director, if he applies to the court to be added as a party.

Where the Child is an Indian or Native Person

C.F.S.A. s.39(1)4

A representative chosen by the child's band or native community is a party to the proceeding where the child is an Indian or native person.

The representative is entitled to party status regardless of the child's residence, whether on a reserve or elsewhere. Consent of the child or the child's parent(s) or person(s) having custody of the child is not required to give party status to the representative.

The Ontario Indian Social Services Council has asked bands to identify their representative(s) for the purposes of the Act. If bands provide names to the Council, the information will be forwarded to the societies.

This provision applies to a child whose band is in another province. The Department of Indian Affairs has advised bands elsewhere in Canada of Ontario's legislation and a mailing list of all bands has been distributed to Ministry area offices for distribution to children's aid societies.

A copy of the Notice of Hearing and Application initiated for a child who is a member of a band or native community should be served on the named band representative, if the representative is known. At the time of writing, a society should not concern itself with the requirement of formal notice to representatives of native communities, as no such communities have been designated under the Act.

If the band representative is not known, a copy of the Notice of Hearing and Application should be served on the Chief, by name. If this is not possible, the notice should be served on another band official, by name. Societies are encouraged to ensure that the band also receive a copy of the notice, even when a specific representative is served. Also, that a copy is sent to the Chief, unless otherwise advised. The telephone numbers, names, and addresses of band officials is available from Ministry area offices or the Department of Indian and Northern Affairs and a list has been sent to all societies.

Notice to the band representative may be given by any of the methods permitted by the rules governing practice and procedure in the court. These rules permit service by a variety of methods ranging from personal service to service by ordinary mail.

As well, the Ministry is encouraging the following:

- a. the band representative should be contacted by telephone to enable as much advance notice of a hearing as possible (the band may also be contacted);
- b. if a visit is being made to a reserve to serve notice on a child's parent(s), the band representative should also be served personally; and
- c. as a general rule, personal service should be provided wherever possible.

Class of Children Entitled to Participate as if They Were Parties

C.F.S.A. s.39(6)

The child who is the subject of the application is not included among persons who have party status and is thus not able to participate fully in the court action. The Child and Family Services Act specifies, as an alternative to full party status, that certain classes of children are entitled to participate as if they were parties:

- a. children who apply to the court for a review of their status, (restricted to children 12 years of age and older);
- b. children who receive formal notice of a child protection proceeding initiated on their behalf (restricted to children 12 years of age and older unless the child protection court orders otherwise);
- c. children who have legal representation.

These children also have status to appeal a decision of the child protection court.

In this manner these children are accorded all the rights of a party but not held liable for a potential order for costs.

Foster parents do not have party status in child protection proceedings unless the court orders otherwise.

**13. SEPARATION OF CHILD PROTECTION HEARINGS
FROM CRIMINAL PROCEEDINGS**

C.F.S.A. s.41(3)

The Child and Family Services Act re-enacts the requirement of predecessor legislation that a child protection hearing be held separately from criminal court proceedings.

14. PRIVATE HEARING OF THE APPLICATION

C.F.S.A. s.41(4)

The Child and Family Services Act preserves those provisions of predecessor law designed to respect the sensitivity of the child and family involved in child protection proceedings. The matter must be heard in the absence of the public, unless the court orders otherwise.

If a member of the public seeks to be present, the court must consider:

- a. the wishes and interests of the parties, and
- b. whether the presence of the public would cause emotional harm to any child participating in or the subject of the proceeding.

15. MEDIA ACCESS

C.F.S.A. ss.41& 81(3)

The Child and Family Services Act continues the following provisions of predecessor legislation designed to protect children and their families from press, radio and television attention when they are before the child protection court:

- a. the general rule that no more than 2 media representatives are allowed at the hearing, such representatives chosen by the media representatives in attendance, or by the court, if the media representatives cannot agree;

- b. judicial discretion to permit additional representatives;
- c. judicial discretion to exclude a particular media representative or all media from part or all of the hearing if, in the court's opinion, the presence of the media would cause emotional harm to any child who is a participant in or the subject of the proceeding;
- d. judicial discretion to prohibit the publication of a report of the hearing or any specified part of it, if, in the court's opinion, the publication would cause emotional harm to any child who is a participant in or the subject of the proceeding;
- e. a ban on publication of any information that has the effect of identifying:
 - (i) a child who is participating in or the subject of the proceeding (predecessor law prohibited the identification of any child present at the hearing);
 - (ii) the child's parent or another member of the child's family; or,
 - (iii) the child's foster parent.
- f. a ban on publication of information that has the effect of identifying a person charged with a offence under Part III of the Act;
- g. liability for contravention of the prohibitions against publication (fine of up to \$10,000 and/or imprisonment for a term of up to 3 years).

**16. COURT'S DISCRETION TO EXPEDITE THE
HEARING OF AN EMERGENCY MATTER**

C.F.S.A. s.39(7)

The Child and Family Services Act preserves the "emergency hearing" mechanism of predecessor legislation. The court has discretion to dispense with formal notice of a Protection application to any of the persons otherwise entitled to notice, if the party alleging the emergency satisfies it that the time required to give notice might endanger the child's health or safety. If the court is so satisfied, it may adjudicate the child's need for protection on the basis of the evidence led.

In circumstances of emergency the court may order society wardship for a period less than 30 days, or alternatively, order the child into the temporary (interim) care and custody of a children's aid society pending full hearing of the protection application. A temporary interim care and custody order in favour of the society is sufficient under the new Act to allow the society to consent to medical treatment required by the child.

17. PRELIMINARY FINDINGS

C.F.S.A. ss.43(2); 3(1)15, 19, 20

(1) Generally

The Child and Family Services Act preserves the requirement of predecessor legislation that the court, as soon as practicable and before determining whether the child is in need of protection, make the following findings:

- a. the child's name and age;
- b. religious faith, if any, in which the child is being raised;
- c. if the child is before the court as a result of apprehension, the location of the place from which the child was removed.

In addition, the court must determine whether the child is an Indian or native person, and if so, the child's band or native community. This was not a requirement of predecessor legislation.

(2) Determination of a Child's Religious Faith

C.F.S.A. s.82

The Child and Family Services Act makes certain changes to predecessor legislative provisions that addressed the child's religious faith, to bring the law into line with current human rights legislation. Under predecessor legislation a child born within marriage was deemed to have the same religious faith as his father, unless it was shown that the parents had entered into a written agreement providing that the child be raised in another religious faith. A child born outside marriage was deemed to have the religious faith of his mother.

The Child and Family Services Act simplifies the matter by providing that a child is deemed to have the religious faith agreed upon by his parents.

The child protection court has authority to decide what a child's religious faith if any, is, if any of the following circumstances exist:

- a. there is no agreement between the child's parents;
- b. the court cannot readily determine what the agreement of the parents actually is; or,
- c. the court cannot readily determine whether any religious faith is agreed upon.

In making its determination, the court is to consider the child's views and wishes, if they can be reasonably ascertained.

(3) Determination Whether a Child is an Indian or Native Person

C.F.S.A. s.43(2)(c)

Under CFSA, "Indian" and "band" have the same meanings as in the Indian Act. Under the Indian Act, an Indian person is defined as a person who pursuant to the Act is registered as an Indian or is entitled to be registered as an Indian, and a member of a band means a person whose name appears on a Band List or who is entitled to have his name on a Band List.

A native person or child is defined by the Child and Family Services Act to mean a person who is a member of a native community but not a member of a band recognized by the federal Indian Act. A native community, in turn, is a community designated by the minister under Part X of the Child and Family Services Act. No such communities are yet designated.

The easiest way to determine whether a child is registered or entitled to be registered as Indian under the Indian Act, and the child's band affiliation, if any, is to ask the child, the child's parent(s), or the person(s) who have custody of the child. Parents or guardians usually have documents (a status card) sufficient for this purpose. Where a society is unable to make this determination through the usual inquiries, local Indian organizations and

service providers should be contacted for assistance. If necessary, societies may contact the local or regional office of the Department of Indian and Northern Affairs for guidance and assistance.

It should be noted that neither Indian status nor band membership is dependent on reserve residency.

18. ADJOURNMENTS

C.F.S.A. s.47

(1) Generally

The Child and Family Services Act continues the requirements of predecessor legislation designed to ensure that child protection matters are not permitted to drift aimlessly before the court, with resultant detriment to the child who is caught in the litigation, and expands the class of those persons who must be alert to that potential detriment.

(2) The 30-day Maximum

C.F.S.A. s.47(1)

The new Act cautions the court not to adjourn a hearing for more than 30 days:

- a. unless all the parties present in court and the person who will be caring for the child during the adjournment consent to a longer adjournment; or,
- b. if the court is aware that a party who is not present in court objects to the longer adjournment.

(3) Court's Responsibility to Set Date for Hearing

C.F.S.A. s.48

The Child and Family Services Act introduces an automatic mechanism to the court process to guard against undue delay in the hearing of the protection application itself.

If the court has not made its determination regarding the child's alleged need of protection within 3 months of the filing of the protection application, the

Child and Family Services Act requires the court to fix a date for the hearing. The date should be the earliest date compatible with the just disposition of the application. The Act empowers the court to give such directions and make such orders with respect to the proceeding as are "just".

Note that the Child and Family Services Act addresses the need to have the finding of protection determined within a maximum 3-month period. There is no such restriction on the time within which final disposition of the application is to be reached, except the constraints on adjournment discussed earlier.

(4) More Specific Direction Governing Temporary (Interim) Orders of Care and Custody During Adjournment **C.F.S.A. s.47(2) & (3)**

The Child and Family Services Act specifies that the court must also adhere to the "least restrictive alternative" principle in choosing an order for the child's interim care and custody. It was not clear under predecessor legislation whether the court could order interim supervision of a child in his own home pending full hearing of the protection application. The Act clarifies that this is indeed an option for the child and should be carefully considered as an alternative to foster care. The Act expresses a clear preference to an order for interim custody that protects the child within the familiarity of his own home, if that is reasonably possible in the circumstances.

The protection worker considers the following factors in formulating a recommendation to the court regarding the child's interim custody pending completion of the protection hearing:

- a. whether the child during the adjournment can remain with or be returned to the person who had charge of him immediately before intervention; or alternatively;
- b. whether the child can remain with or be returned to that person subject to supervision by a children's aid society. The court may attach reasonable terms and conditions relating to the child's supervision.

If, by leaving the child in his own home, there is a substantial risk to the child's health or safety, the protection worker considers one of the following recommendations:

- a. an order that the child be placed in the care and custody of a person other than the person who had charge of the child before intervention, subject to the society's supervision, and on terms and conditions relating to the supervision as the court considers appropriate. An essential part of the evidence supporting this order is the consent of that individual to care for the child on the terms recommended; or
- b. an order that the child remain in or be placed in the care and custody of a children's aid society. This includes the authority to order the child placed in an open temporary detention resource designated as a place of safety, if the criteria for such placement are met.

(5) Credible and Trustworthy Evidence

C.F.S.A. s.47(7)

The Child and Family Services Act preserves the authority given by predecessor legislation to allow the court to act on evidence at this stage of the proceeding that the court considers "credible and trustworthy" in the circumstances.

(6) Access Rights During Adjournment

C.F.S.A. s.47(5)

The court's order may contain provisions regarding any person's right of access to the child. The court may also attach such terms and conditions to the access as it considers appropriate.

(7) Power to Vary the Order

C.F.S.A. s.47(6)

The Child and Family Services Act also preserves the court's power at any time to vary or terminate the temporary custody order.

(8) Society's Authority to Consent to Medical Treatment During the Adjournment

C.F.S.A. s.47(4)

A temporary care and custody order in favour of the children's aid society pending full hearing of the protection application vests the society with the

authority to consent to medical treatment for the child where a parent's consent would otherwise be required. This authority was not specifically identified by predecessor legislation.

However, the court may order that the parent retain the right to give or refuse consent to medical treatment for the child, unless the basis for the society's intervention is the parent's failure to provide necessary medical treatment.

If the protection worker opposes such an order, evidence must be placed before the court to persuade the judge that such authority should rest with the society.

The court may vary its custody order to give the society authority to consent to medical examination, if such variance of the order is necessary.

19. THE PROTECTION HEARING

(1) "Protection" Evidence Before "Best Interest" Evidence

C.F.S.A. s.46(2)

The Child and Family Services Act stipulates that evidence relating solely to disposition of the application (i.e. what "order" is in the child's best interests) is not to be heard by the court until it first determines whether the child is in need of protection at all.

If the child is not in need of protection within the intent of the Act the matter ends there.

(2) "Past Conduct" Evidence

C.F.S.A. s.46

The Child and Family Services Act allows a court to consider the past conduct of a person toward any child who is or has been in the person's care, if that person is a potential custodian of the child. This authority given to the court overrides any contradictory provision of the Ontario Evidence Act.

Thus, any statement or report addressing a person's past conduct, whether oral or written, including a transcript, exhibit or finding in an earlier civil or criminal proceeding may be admitted into evidence in the child protection proceeding, subject to the following "quality" controls:

- a. the contents of the evidence must address a person's past conduct toward a child who is or has been in that person's care;
- b. the person must be an individual with whom the child might be placed;
- c. the court must be satisfied that the "past conduct" evidence is relevant to the present proceeding; and,
- d. the statement or report must be proved as the court directs.

In this manner the Act gives the court an overriding discretion to exclude the past conduct evidence altogether, even if it meets the certain "quality controls". The presiding judge is no longer required to receive such evidence.

(3) "Necessity" of Court Ordered Intervention

C.F.S.A. s.53(1)

Unlike predecessor legislation, the Child and Family Services Act requires the child protection worker to present evidence sufficient to justify the court's findings that the child is in need of protection within the ambit of the new definition, and also to satisfy the court that intervention through a court order is necessary to protect the child in the future.

This is a legislative acknowledgement that there is really nothing to be gained by a court order if the evidence shows that the child is not in need of protection at the time of hearing. If, therefore, the court decides that a child was in need of protection at the time of intervention, but is no longer, the court must order that the child remain or be returned to the person who had charge of him prior to the intervention.

(4) Expanded Authority to Guard Against "Assessment Limbo"

C.F.S.A. s.50

The Child and Family Services Act preserves the essentials of predecessor legislation that allowed the child protection court to order an independent

assessment of the child or family to assist the court in determining which of the protection orders available under the Act is best suited to the child's needs. The following restrictions on the court's power are continued:

- a. the court must first find the child to be in need of protection under the new Act. Assessment before that finding requires the consent of all the parties;
- b. the proposed assessment may be medical, emotional, developmental, psychological, educational or social;
- c. the proposed assessor must be a person qualified, in the court's opinion, to perform the assessment;
- d. the proposed assessor must consent to perform the assessment;
- e. the court may order any of the following persons to attend:
 - (i) the child;
 - (ii) a parent;
 - (iii) any other person in whose charge the child has been or may be, (except a foster parent);
- f. the court may draw any inference it considers reasonable from a person's refusal to undergo an assessment;
- g. the assessment report cannot be placed as evidence in any proceeding other than the protection or status review proceeding without the consent of the persons assessed, except;
 - (i) in an appeal of the decision of the child protection court;
 - (ii) in a proceeding under the Coroners Act (an inquest); or
 - (iii) in an action to recover compensation for a child.

The Child and Family Services Act introduces the following requirements designed to control the length of time the protection litigation is "on hold" pending completion of the assessment:

- a. the court's assessment order must specify the time within which the assessment is to be completed. The Act requires a period of not more than 30 days unless the court is of the opinion that a longer assessment period is necessary; **C.F.S.A. s.50(2)**
- b. the assessor is required to make a written assessment report to the court within the time specified in the court order; **C.F.S.A. s.50(1)**
- c. at least 7 days before the court considers the report at its resumption of the protection hearing, the court, or alternatively, the party who has requested the assessment, must provide a copy of the report to the person assessed. If that person is a child under 12 years of age, the child is not entitled to a copy of the report unless the court considers it desirable. If the person assessed is a child over 12 years of age, he is entitled to a copy of the report unless any party objecting to that disclosure satisfies the court that disclosure of all or part of the report to the child would cause him emotional harm:
 - (i) the child's lawyer or agent of record;
 - (ii) a parent appearing at the hearing or the parents' lawyer of record;
 - (iii) the children's aid society caring for or supervising the child;
 - (iv) a Ministry director, if he requests a copy;
 - (v) where the child is an Indian or a native person, a representative chosen by the child's band or native community; and
 - (vi) any other person who, in the court's opinion, should receive a copy of the report for the purposes of the case; **C.F.S.A. s.50(3)**
- d. the new Act also specifies that the assessment report is evidence and part of the court record in the proceeding. **C.F.S.A. s.50(6)**

He who requisitions the assessment is responsible for its cost, if the assessment is not undertaken by the court clinic providing assessment services to the court.

(5) Written Plan of Care

C.F.S.A. s.52

It has historically been the practice of children's aid societies to present a plan for care or supervision to the court, as part of the evidence proffered in

support of the particular order recommended by the society, to best serve the child's interests. The plan was usually presented to the court through the verbal testimony of the society worker responsible for service to the family and child.

The Child and Family Services Act requires the children's aid society to file a written plan for the child's care, and the court to consider that as an essential part of any protection or status review filed on the child's behalf. That plan must include the following minimums:

- a. a description of the services to be provided to remedy the conditions or situation that resulted in the child's need for protection;
- b. a statement of the criteria by which the society will determine when its wardship or supervision is no longer required;
- c. an estimate of the time required to achieve the purpose of the society's intervention;
- d. where the society proposes to remove or has removed the child from a person's care:
 - (i) an explanation of why the child cannot be adequately protected while in the person's care, and a description of any past efforts to do so; and
 - (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the person; and
- e. where the society proposes to remove or has removed the child from a person's care permanently, a description of the arrangements made or being made for the child's long-term stable placement.

This new requirement is intended to give each party to the proceeding and the court a tangible reference tool stipulating the particular role each party plays in attempting to resolve the circumstances that have led to the state's interference with the family's autonomy. At the time of status review, that plan may constitute the springboard from which the parties present the extent to which the child's circumstances have changed.

(6) New Role for the Court in Consent Orders**C.F.S.A. s.51**

The Child and Family Services Act allows the child to be brought before the child protection court with the consent of the parties if the parent is unable to provide care himself. The child, if he is over 12 years of age, must also give his consent.

Unlike predecessor legislation, the Child and Family Services Act charges the child protection court with special responsibility if the parties request the court to make an order "on consent". Before making any order that removes the child from the parent's care and custody, the court must ask:

- a. whether the society has offered the parent and child services that would enable the child to remain with the parent, and
- b. whether the parent and the child, if he is over 12 years of age, have consulted independent legal counsel in connection with the consent.

In addition, the court must be satisfied:

- a. that the parent and the child, if he is over 12 years of age, understand the nature and consequences of the consent,
- b. that every consent is voluntary, and
- c. that the parent and the child, if he is over 12 years of age, consent to the order being sought.

These provisions are designed to ensure that a parent consenting to the court's finding that the child is in need of protection, recognizes that it is not a step that should be taken lightly. Some parents, for example, ask societies to take children into care because they are in crisis and are unaware of alternatives to residential care that might better benefit the child. These provisions ensure that the full range of services available have been considered by the parent.

Note that the court must ascertain that the consent of a parent or a child over age 12 encompasses not only consent to the court's finding that the child

is in need of protection, but also to the particular care and custody order recommended.

(7) Best Interests Criteria for Determining Disposition

C.F.S.A. ss.37(3) & 53(1)

Generally

The Child and Family Services Act continues the requirement of predecessor legislation that the court's decision-making on disposition be governed by the best interests of the child, instructing the court to address the particular criteria that the court considers relevant to the child's case, and revises the criteria as noted below:

- a. the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- b. the child's physical, mental and emotional level of development;
- c. the child's cultural background;
- d. religious faith, if any, in which the child is being raised;
- e. the importance for the child's development of a positive relationship with a parent and a secure place as a member of a family;
- f. the child's relationships by blood or through an adoption order;
- g. the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity;
- h. the merits of a plan for the child's care proposed by a children's aid society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent;
- i. the child's views and wishes, if they can be reasonably ascertained;
- j. the effects on the child of delay in the disposition of the case.

- k. any risk that the child may suffer harm through being removed or kept away from a parent; (NEW)
- l. any risk that the child may suffer harm through being returned to or allowed to remain in the care of a parent;
- m. the degree of risk, if any, that justified the finding that the child is in need of protection; (NEW)
- n. any other relevant circumstances;

Special Consideration for Indian and Native Children

C.F.S.A. s.37(4)

If the child is an Indian or native person, the Child and Family Services Act requires the court to take into consideration the importance of preserving the child's cultural identity, recognizing the uniqueness of Indian and native culture, heritage and traditions.

(8) "Least Restrictive Alternative" Disposition

C.F.S.A. s.53

The Child and Family Services Act builds on those dispositions that were provided by predecessor legislation. The court may make any of the following orders for a child it finds to be in need of protection at the time of the hearing:

- a. order that the child be placed with or returned to a parent subject to supervision by a children's aid society for a specified period of at least 3 and not more than 12 months;
- b. order that the child be placed with or returned to another person, subject to the supervision by a children's aid society for a specified period of at least 3 and not more than 12 months.

The court may impose reasonable terms and conditions on:

- (i) the person with whom the child is placed or to whom the child is returned;
- (ii) the supervising society;

- (iii) the child; and
- (iv) any other person who participated in the hearing;

The terms and conditions must relate to the child's care and supervision.

- c. order that the child be made a ward of the society and be placed in its care and custody for a specified period not exceeding 12 months;
- d. order that the child be made a ward of the society for a specified period and then be returned to a parent or another person under an order of society supervision, for a period or periods not exceeding an aggregate of 12 months;
- e. order that the child be made a ward of the Crown, and be placed in the care of the specified children's aid society until the wardship is terminated or expires.

The Child and Family Services Act requires the court to be mindful of the "least restrictive alternative" principle when considering facts presented in support of a particular recommendation for the child:

- a. the court cannot make any order that removes the child from the care of the person who had charge of him before intervention under Part III unless satisfied that:
 - (i) less restrictive alternatives, including non-residential services and efforts to assist the child before intervention, have been attempted and have failed;
 - (ii) less restrictive alternatives have been refused by the person who has charge of the child; or,
 - (iii) less restrictive alternatives would be inadequate to protect the child;
- b. the court cannot order Crown wardship unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time so that the child can be returned to the parent or any other person who had charge of him at the time of the society's protective intervention under Part III of the Act;

C.F.S.A. s.53(3)

C.F.S.A. s.53(6)

- c. the court's choice of disposition must be decided within an overall consideration of what is the least disruptive alternative for the child;

C.F.S.A. s.1(d)

- d. the court must consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family who is willing to take the child and is able to provide responsible care under an order of society supervision. For purposes of Part III, "extended family" means those persons to whom the child is related by blood, marriage or adoption.

C.F.S.A. s.53(5)

- e. if the child before the court is an Indian or native person, the court must place the child with a member of the child's extended family, a member of the child's band or native community or another Indian or native family, unless there is a substantial reason for placing the child elsewhere.

C.F.S.A. ss.53(5); 37(1)

The court must also ask the parties what efforts the children's aid society or any other agency or person have made to assist the child before protective intervention under Part III of the Act.

C.F.S.A. s.53(2)

20. PARENTAL CONTRIBUTION TO THE COST OF CHILD'S CARE

C.F.S.A. s.56

The Child and Family Services Act leaves predecessor law intact for applicants who seek parental contribution to the cost of a child's care. Thus, where the court places the child in the care of a children's aid society or a person other than the child's parent, subject to a society's supervision, the court may also order a parent or the parent's estate to contribute to the cost of the child's care.

Under the Child and Family Services Act, such determination will depend on those of the following circumstances that the court considers relevant:

- a. the assets and means of the child and of the parent or the parent's estate;
- b. the child's capacity to provide for his or her own support;

- c. the capacity of the parent or the parent's estate to provide support;
- d. age and physical and mental health of both parent and child;
- e. the child's mental, emotional and physical needs;
- f. any legal obligation of the parent or the parent's estate to provide support for another person;
- g. the child's aptitude for and reasonable prospects of obtaining an education;
- h. any legal right of the child to support from another source, other than public funds;

The court has power to vary, suspend or terminate the parental contribution where the person seeking the contribution satisfies the court that the circumstances of the child or parent have changed. The parental contribution order may not extend beyond the child's 18th birthday.

The Child and Family Services Act allows the council of a municipality to enter into an agreement with the board of directors of a society to provide for the collection by the municipality, on the society's behalf, of the amounts ordered to be paid by a parent. This was also permitted by predecessor legislation.

An order made against a parent may be enforced by any of the following measures:

- a. the court's power to order the debtor to provide security for the payment;
- b. enforcement by the clerk of the court in accordance with any automatic enforcement mechanism available to the court;
- c. the court's power to issue an execution order to be filed with the sheriff;
- d. the court's power to order garnishee of wages;

- e. the authority of the clerk of the Provincial Court (Family Division) or the Unified Family Court to require the debtor:
 - (i) to file a statement of financial information,
 - (ii) to submit to an examination of assets and means, and
 - (iii) to appear before the court to explain the default;
- f. the court's authority, as a last resort, and if debtor fails to satisfy the court that the default is due to an inability to pay, to order imprisonment for a term of up to 90 days.

21. COURT'S POWER TO RESTRAIN A PERSON'S ACCESS TO THE CHILD

C.F.S.A. s.76

(1) The New Power

C.F.S.A. s.76(1)

The Child and Family Services Act gives the child protection court authority to make an order restraining or prohibiting a particular person's access to or contact with the child, or prohibiting that access altogether.

(2) What Applicant Must Prove

C.F.S.A. s.76(1)(2); 81(1)(g)

The court may make an order to restrict or prohibit access at the request of any party to the proceeding, if:

- a. the court has made a finding that the child is in need of protection, as defined by the Act;
- b. it is in the child's best interests to do so; and
- c. notice of the request for a restraining order has been served personally on the person to be named in the order.

If so satisfied, the court may include in the order such directions as the court considers appropriate for implementing the order and protecting the child.

A person who contravenes the restraining order commits an offence under the Child and Family Services Act and is liable on conviction to a fine of up to \$1,000. and/or imprisonment for a term of up to 1 year.

(3) Maximum Period of the Restraining Order

C.F.S.A. s.76(3)

A restraining order is in force for a period specified by the court. The initial order may not exceed 6 months.

(4) Power to Vary, Extend or Terminate the Restraining Order

C.F.S.A. ss.76(4); 37(3)(4)4

Any of the following persons may apply to the child protection court to vary, extend or terminate the restraining order:

- a. the person who is the subject of the order;
- b. the child;
- c. the person having charge of the child;
- d. a society;
- e. a Ministry director; or
- f. where the child is an Indian or a native person, a representative chosen by the child's band or native community.

Such application is initiated by a notice of motion and supporting affidavit served the parties to the protection or status review proceeding, and personally served on the person to be named in the order.

The court's determination of this application is also governed by the child's best interests. Where the child is an Indian or native person the court must take into consideration the importance of preserving the child's cultural identity in recognition of the uniqueness of Indian and native culture, heritage and traditions.

An extension of the order is limited to a further period or periods of 6 months.

If no application is made to extend the order, it will expire at the end of the period set by the court.

(5) Prohibition Against Child's Return While Restraining Order in Effect

C.F.S.A. s.76(5)

If the child is in the care of a children's aid society, the society is not permitted to return the child to the care of the person named in the order or to any person who may permit that person to have access to the child, as long as the restraining order is in force.

This new remedy will give the protection worker an alternative that he might not otherwise have to arrange for a child's protection within the familiar surroundings of his own home.

This remedy should be of particular use in cases where the child is sexually abused or exploited.

22. ACCESS ORDERS

C.F.S.A. ss.54 & 55

(1) Generally

C.F.S.A. s.55(1)

If the court orders the child removed from the person who had charge of him before intervention under Part III, the Act requires the court in all instances but Crown wardship to make an order for the child's continued access to that person, unless any party opposing access satisfies the court that continued contact would not be in the child's best interests. No order regarding access to a person over 16 years of age can be made without that person's consent (under predecessor legislation the court could not order access at all for a child over the age of 16 years). These provisions continue and expand the thrust of predecessor legislation to accentuate the importance to the child of maintaining contact with his family necessary to alleviate feelings of abandonment that he may experience when he is removed from all that is familiar to him.

(2) Restrictions on Access to a Crown Ward**C.F.S.A. s.55(2)**

The Child and Family Services Act prohibits access to a Crown ward unless the court is satisfied that at least one of the following circumstances is present:

- a. permanent placement in a family setting has not been planned or is not possible, and the person's access will not impair the child's future opportunities for such placement;
- b. the child is at least 12 years of age and wishes to maintain contact with the person;
- c. the child has been or will be placed with a person who does not wish to adopt the child; or
- d. some other special circumstances justifies making an order for access.

No subsequent access application is permitted at all to a Crown ward who has been placed for adoption and still resides in the adoptive home.

(3) Continued Availability of an Independent Application Relating to Access

Predecessor legislation provided a means by which certain persons could apply to the court for a determination of persons entitled to access to the child while he was living apart from his family. The Child and Family Services Act expands the class of persons who may seek access, or a variation or termination of an existing access order made by the child protection court.

Under the Child and Family Services Act, the following persons may initiate an application for access, where the child who is in the care and custody of a children's aid society or under its supervision:

- a. the child;
- b. any other person, including, where the child is an Indian or native person, a representative chosen by the child's band or native community; or

c. a children's aid society.

C.F.S.A. s.54(2)

Only a children's aid society can initiate an application at any time relating to access. Persons other than the society are not permitted to make application within 6 months of the most recent of the following:

- a. disposition of the protection application by one of the permitted orders;
- b. the disposition of a previous application relating to access initiated by the same person;
- c. the disposition of a status review application;
- d. the final disposition of an appeal of any of the aforementioned orders.

This clarifies the intent of predecessor legislation. The court retains the discretion given to it by predecessor legislation to impose terms and conditions on an access order as the court considers appropriate.

(4) Notice Requirements

C.F.S.A. s.54(3)(4)

A person seeking access is required to give formal notice of his application to the children's aid society responsible for the child.

The society's responsibility, continued from predecessor legislation, is to ensure that each of the following persons is served with a copy of those documents or that a reasonable effort is made to do so:

- a. the child, over age 12;
- b. the child under age 12, only if the court so orders;
- c. the person caring for the child at the time of the application;
- d. where the child is an Indian or native person, a representative chosen by the child's band or native community.

(5) Criteria Governing the Court's Determination C.F.S.A. ss.54(1); 37(3)(4)

The Child and Family Services Act preserves the test of "best interests" as defined by the new Act as the basis upon which the court must determine the access application.

Where the child is an Indian or native person the Act requires the Court to take into consideration the importance of preserving the child's cultural identity, in recognition of the uniqueness of Indian and native culture, heritage and traditions.

(6) Termination of an Outstanding Access Order to a Crown Ward

C.F.S.A. s.55(3)

The Child and Family Services Act introduces a specific test for the court if the applicant seeks termination of access to a Crown ward. When the Child and Family Services Act is proclaimed the applicant must satisfy the court that the circumstances which justified the access order no longer exist. This is, in substance, the test historically used by the court.

23. REVIEW OF THE CHILD'S STATUS

C.F.S.A. s.60

(1) Generally

The Child and Family Services Act consolidates the following provisions of predecessor legislation that relate to a review of a child's status:

- a. the society may apply at any time for review of the status of a society or Crown ward or a child under society supervision, unless the child is a Crown ward on adoption placement, in which case no person or society may seek status review as long as the adoption placement continues.

C.F.S.A. s.60(2)

- b. the children's aid society having care, custody or supervision of the child must apply to the child protection court for a review of the child's status before the expiry of the order, unless the child reaches age 18 while subject to the order. In that case, the order expires automatically;

C.F.S.A. s.60(2)(b)

- c. if the child is apprehended from a person who has custody by virtue of an existing order of society supervision, the society responsible for the supervision must initiate a status review application within 5 days of the child's removal; **C.F.S.A. s.60(2)(c)**
- d. if the child under a society supervision order is being supervised by a children's aid society in another jurisdiction because both the child and the person with whom he is placed reside in that other jurisdiction, the society actually carrying out the supervision may initiate a status review application in its own jurisdiction; **C.F.S.A. s.60(3)**
- e. the child remains in the care and custody of the person or society having charge of the child until the status review application is determined, unless a party seeking a change to that status quo satisfies the court that the child's best interests require a change in the child's care and custody; **C.F.S.A. ss.60(1); 37(3)**
- f. persons other than a society as a general rule are not permitted to initiate a status review within 6 months of:
 - (i) the court's disposition of the protection application,
 - (ii) the court's disposition of a previous status review application; or,
 - (iii) the final disposition or abandonment of an appeal from a Protection or Status Review order, whichever is the latest.

This provides some clarity where the wording of predecessor legislation created some confusion.

- g. The applicant is required to give formal notice of his application to a children's aid society.

The following requirements pertaining to status review have been introduced by the Child and Family Services Act:

- a. the 6-month prohibition, outlined in item (f) above does not apply where the applicant satisfies the court that a major element of the plan for the child's care that was filed with the court is not being carried out. This allows a status review to occur, notwithstanding the 6 month prohibition affecting applications made by persons other than a children's aid society for status review of:

- (i) supervision orders;
- (ii) society wardship orders; and,
- (iii) Crown wardship orders where access specifically attaches;

C.F.S.A. s.60(8)

b. the following persons are now entitled by the Child and Family Services Act to initiate a status review application:

- (i) the child , if he is over 12 years of age;
- (ii) any parent of the child, subject to the restriction outlined below, if the child is a Crown ward;
- (iii) the person with whom the child was placed under an order of society supervision;
- (iv) where the child is an Indian or native person, a representative chosen by the child's band or native community; **C.F.S.A. s.60(4)**

c. a parent of a Crown ward requires the leave of the court to initiate a status review application if the child has lived with the same foster parent continuously during the 2 years immediately preceding the application;

d. it remains the responsibility of the society to ensure that certain persons are served with a copy of the status review application and notice of hearing, or that a reasonable attempt is made to do so. The following persons are now entitled to formal notice under the new legislation:

- (i) the child over age 12 (predecessor legislation required formal notice to be given to the child age 10 and over);
- (ii) the child under age 12, only if the court orders;
- (iii) the child's parent, unless the child is a Crown ward and is 16 years of age or older;
- (iv) the person with whom the child was placed under an order for society supervision;
- (v) a foster parent who has cared for the child continuously during the 6 months immediately preceding the application;
- (vi) where the child is an Indian or a native person, a representative chosen by the child's band or native community; and
- (vii) a Ministry director, if the child is a Crown ward. **C.F.S.A. s.60(6)**

With regard to a status review for an Indian child, the action to be taken during the first year following proclamation is now being examined. Statistics about the number of Indian children in care are being obtained and consultation with the Chiefs of Ontario, the Ontario Indian Social Services Council and the societies is continuing.

(2) More Specific Criteria for the Court's Decision-Making on Status Review

C.F.S.A. ss.61(2)(3); 37(3)(4)

The court has available to it any of the following orders at the time of status review:

- a. a further order or orders under section 53;
- b. power to vary or terminate the original protection order, including a term, condition or provision of access that is part of the order;
- c. power to order that the original order terminate on a specified future date.

The court is not permitted to make an order for society wardship for a child who has been made a Crown ward. Predecessor legislation also contained this prohibition.

The court's choice of disposition is governed by the best interests of the child, as that term is defined by the new legislation. If the child is an Indian or native person the Court must also take into consideration the importance of preserving the child's cultural identity, in recognition of the uniqueness of Indian and native culture.

The children's aid society responsible for the status review application must file a written plan for the child, setting out those elements required by section 52 of the Act.

The Act also requires the court to consider each of the following additional criteria in its determination of the status review application:

- a. whether the grounds on which the original order was made still exist;

- b. whether the plan for the child's care that the court applied in its decision is being carried out;
- c. what services have been provided or offered under the new legislation to the person who had charge of the child immediately before intervention under Part III;
- d. whether the person is satisfied with those services;
- e. whether the society is satisfied that the person has co-operated with the society and with any person or agency providing services;
- f. whether the person or the child requires further services;
- g. whether, where immediate termination of the order has been applied for but is not appropriate, a future date for termination of the order can be estimated;
- h. what is the least restrictive alternative available and appropriate that is in the child's best interests.

In this manner, the legislation addresses the plan for care specified in the court's most recent order and whether it is in fact meeting the needs of the child and the family.

24. THE 24-MONTH MAXIMUM OF TEMPORARY CARE

C.F.S.A. s.66

The Court cannot make an order under Part III of the Act that has the effect of a child remaining in the temporary care and custody of a children's aid society for a continuous period in excess of 24 months. As under predecessor legislation, this time period includes:

- a. a child's time in a children's aid society's care under a temporary care or special needs agreement;
- b. a child's time in care under a temporary (interim) order of the child protection court pending full hearing of the protection application;

- c. a child's time in care under a society wardship order.

The intent of this time limit is, as it was under predecessor legislation, to ensure that permanent, more stable planning is undertaken for the child than that available under a "temporary" care status; that is, permanent planning through Crown wardship or alternatively, the child's return to a parent or other person, with society supervision, if necessary. The 24-month maximum period can be exceeded only in the following circumstances:

- a. if an appeal of the most recent child protection court order has been launched and has not yet reached final disposition, or
- b. if the child is before the child protection court for review of his status and the court has adjourned the hearing.

In the latter case, the 24-month maximum is deemed to be extended until the court has made its decision on the status review. Similarly, the maximum 24-month limit is deemed extended if the matter is on appeal until the appeal has reached final disposition and any new hearing ordered on appeal has been completed.

25. MANDATORY CONTENT OF ANY ORDER MADE UNDER PART III

C.F.S.A. s.49

The Child and Family Services Act requires the child protection court to provide the following content in any order it makes under Part III of the Act, either orally or in writing:

- a. a statement of any terms or conditions imposed on the order;
- b. a statement of every plan for the child's care proposed to the court, without necessarily identifying a person or place where it is proposed that a child be placed for care and supervision;
- c. a statement of the plan for the child's care that the court is applying in its decision; and

d. reasons for the court's decision, including,

- (i) a brief statement of the evidence on which the court bases its decision, and
- (ii) where the order has the effect of removing or keeping the child from the care of the person who had charge of the child immediately before intervention, a statement of the reasons why the child cannot be adequately protected while in the person's care.

Predecessor law did not compel the court to give reasons for its decision, but provided substantially identical criteria to be addressed if the court chose to give reasons. This requirement of the Child and Family Services Act makes mandatory that which was optional under predecessor legislation.

26. APPEAL OF ORDERS OF THE CHILD PROTECTION COURT

C.F.S.A. s.65

The following provisions are preserved from predecessor legislation:

- o The Child and Family Services Act allows an appeal of any order of the child protection court, except an order for an assessment.

C.F.S.A. s.65(1)(2)

- o The avenue for appeal continues to be the District Court having jurisdiction in the county or district in which the child protection order was made (county court is now amalgamated with the District Court system so that there is one single district court system).

C.F.S.A. s.65(1)

- o The appeal must be initiated within 30 days of the child protection court's decision. The District Court has discretion to extend the time for initiating an appeal, except where the child has been placed for adoption:

(a) under the consent adoption provisions of Part VII of the new Act;

(b) under the authority of a Crown wardship order.

C.F.S.A. s.65(5)

- o The decision of the child protection court is not to be carried out during this 10-day period following the court's receipt of the notice of appeal.

C.F.S.A. s.65(3)

- o Where the child is in the custody of a children's aid society at the time of the protection court decision, the child remains in the society's care until that 10-day period has expired, or alternatively until the District Court makes its own order for temporary care and custody pending disposition of the appeal.

C.F.S.A. s.65(3)(4)

- o Any party to the appeal may request the District Court to make a temporary order for the child's care and custody. The District Court is also empowered to vary or terminate the order or make a further order pending disposition of the appeal.

C.F.S.A. s.65(4)

- o The District Court may not place the child in a resource that has not been designated as a place of safety under the Child and Family Services Act.

C.F.S.A. s.65(3)(4)

- o Appeal hearings are subject to the same restrictions on public and media access as are child protection hearings.

C.F.S.A. s.65(8)

- o It is within the discretion of the District Court to receive further evidence relating to events after the appealed decision.

C.F.S.A. s.65(6)

The Act introduces the following elements to the appeal process:

- o Any of the following persons may initiate an appeal:
 - (a) any "parent" of the child, as defined by the Act;
 - (b) the person who had charge of the child immediately before intervention occurred under Part III;
 - (c) a Ministry director or the local director of a children's aid society.
 - (d) the child, if he was entitled to participate in the child protection proceeding;

- (e) where the child is an Indian or native person, a representative chosen by the child's band or native community.

Band representatives had no independent right to initiate appeal under predecessor law, and the child could appeal only through a "next friend".

C.F.S.A. s.65(1)

27. APPLICATION BY A THIRD PARTY TO COMPEL INTERVENTION ON A CHILD'S BEHALF

C.F.S.A. s.40(3)

The Child and Family Services Act preserves the right given by predecessor legislation to a member of the community at large to seek a court order compelling intervention by a children's aid society.

As stipulated by predecessor legislation, the aggrieved person must give formal notice of his application to the society, and the court must be satisfied that there are reasonable and probable grounds to believe that:

- a. the child is in need of protection;
- b. the matter has been reported to a children's aid society;
- c. the society has not initiated a protection application on the child's behalf;
- d. no child protection worker has sought a warrant to apprehend the child or has apprehended the child;
- e. The child cannot be protected adequately unless he is brought before the court.

The society retains its right to respond to any or all of these allegations.

The court, after weighing the evidence presented by both the third party applicant and the society, may:

- a. dismiss the application;

- b. order that the person having charge of the child produce him before the court at the time and place named in the order for a hearing to determine whether he or she is in need of protection; or
- c. where the court is satisfied that an order to produce would not protect the child adequately, order that a child protection worker employed by the society bring the child to a place of safety.

These powers are continued from predecessor legislation.

The last of the above-mentioned orders authorizes the child protection worker to enter the premises specified in the order at any time, to search for and remove the child and to use force if necessary. That power of entry is to be exercised according to the criteria prescribed by regulations under the new Act.

28. COURT'S POWER TO SUMMON WITNESSES

C.F.S.A. s.45

The Child and Family Services Act preserves the court's discretion to summon a person to attend and testify at the hearing and produce any document or thing that will aid the court's decision-making. The Child and Family Services Act makes clear that the court may exercise this discretion without being specifically requested by any of the parties to do so. If the court acts on its own initiative, it is responsible for payment of the witness fee prescribed by the court rules.

The court also has the authority to enforce obedience to the summons. Where the court is satisfied that both the summons and the prescribed witness fee were served on a witness, that the witness failed to attend as required and that the presence of the witness is necessary in the proceeding, the court may issue a warrant for the arrest of the witness. The court also has discretion to order that the witness be held in custody until the hearing is completed.

A party to the proceeding may also summon a person to testify.

29. EXPIRY OF ORDERS**C.F.S.A. s.67**

As provided by predecessor legislation, an order under Part III of the Child and Family Services Act expires when the child who is the subject of the order reaches age 18 or marries, whichever comes first.

30. RESTRICTED ACCESS TO COURT TRANSCRIPT**C.F.S.A. s.41(10)**

The Child and Family Services Act limits access to a transcript of the court hearing to persons who have the status of parties and their lawyers, unless the court orders otherwise.

31. PENALTY FOR GIVING FALSE INFORMATION**C.F.S.A. ss.80; 81(1)(j)**

It is an offence under the Child and Family Services Act to knowingly give false information in any application under Part III.

A person who does so commits an offence and is liable, if convicted, to a fine of up to \$1,000. and/or imprisonment for a term of up to 1 year.

Any director, officer or employee of a corporation who authorizes, permits or concurs in such contravention by the corporation is also guilty of this offence and liable to the same penalties.

32. COURT ORDERED ACCESS TO RECORDS TO ASSIST THE SOCIETY'S INVESTIGATION OF ABUSE**C.F.S.A. s.70**

The Child and Family Services Act preserves the following essentials of predecessor law to allow the child protection court to compel disclosure to a children's aid society of a record needed to properly investigate a child's suspected abuse of a child:

- a. either a Ministry director or a children's aid society may at any time request the court for the order;

C.F.S.A. s.70(2)

- b. notice of the motion (request) to the court must be given to the person in possession or control of the record; **C.F.S.A. s.170(2)**
- c. The Ministry director or society must satisfy the court that:
 - (i) a record contains information that may be relevant to a consideration of whether a child is suffering abuse or is likely to suffer abuse; and
 - (ii) the person in possession or control of the record has refused to permit the Ministry director or society director to inspect it; **C.F.S.A. s.70(3)**
- d. the court may examine the record in the process of considering whether to make the production order; **C.F.S.A. s.70(4)**
- e. the court has power to order that the person produces the whole or a specified part of the record; **C.F.S.A. s.70(2)**
- f. the court, the Ministry director, the society director or any person authorized by the Ministry or the society director may inspect and copy the record after the production order is made; **C.F.S.A. s.70(2)**
- g. no person who obtains information by means of the order is permitted to disclose information, except:
 - (i) as specified in the order; and
 - (ii) in testimony in a proceeding under Part III of the Act; **C.F.S.A. s.70(5)**
- h. the court's discretion to compel production of a record overrides the provisions of any other provincial statute, unless the record is a "clinical record" within the meaning of the Mental Health Act. "Clinical record" means part or all of the clinical record compiled in a psychiatric facility with respect to a patient. Patient includes former patient, outpatient and former outpatient. **C.F.S.A. s.76(6)(7) and M.H.A. s.29(1)**

Refusal to disclose a clinical record triggers a hearing required by the Mental Health Act. In determining whether to compel disclosure, the court must give equal consideration to:

- (a) the need to protect the child's health and safety, and
- (b) whether or not the disclosure is likely to result in:
 - (i) injury to the mental conditions of a third person, or
 - (ii) bodily harm to a third person; **M.H.A. s.29(7)**
- i. the court does not have power to compel disclosure of information protected by the privilege that exists between a solicitor and his client. **C.F.S.A. s.70(6)**

The Child and Family Service Act defines "record" to mean any recorded information, regardless of its physical form or characteristics, thus encompassing, for example, computer information and audio or video tape recordings. **C.F.S.A. s.70(1)**

33. MINISTRY DIRECTOR'S AUTHORITY TO PERMIT PLACEMENT NOTWITHSTANDING OPERATION OF THE "RELIGIOUS FAITH" PROVISION **C.F.S.A. s.82(5)**

One of the primary purposes of this religious faith determination is to make certain that the child is served by the appropriate children's aid society where there is more than one society in a municipality. Thus, the Child and Family Services Act preserves the restrictions of predecessor legislation which ensure that Roman Catholic children are committed only to the care of Roman Catholic children's aid societies and institutions, and that Protestant children are committed only to Protestant children's aid societies and institutions. Similarly, a Roman Catholic child is not to be placed in a foster home with a Protestant family, nor is a Protestant child to be placed in a foster home with a Roman Catholic family. Where the child is neither Roman Catholic nor Protestant, he is to be placed, where practicable, with a family of his own religious faith, if one has been identified. These rules do not apply in a locality in which there is only one society.

Where a society is either unable to place a child in a suitable foster home within a reasonable time as a result of the religious faith restriction on placement, or alternatively, would be able to place the child in a suitable

foster home but for that restriction, it may ask a Ministry director to order that the restriction does not apply to the child as far as the placement is concerned. Under predecessor legislation this authority was given only to the Court.

**34. CHILDREN UNDER 12 YEARS OF AGE WHO ARE IN CONFLICT WITH
THE LAW** **C.F.S.A. s.40(10)(11)(12)**

The Child and Family Services Act makes specific provision for the apprehension and handling of children under the age of 12 years who have come into conflict with the law and who but for their age, would be dealt with by Act Part IV, Young Offenders of the Child and Family Services Act. The federal Young Offenders Act raised the age of criminal responsibility to age 12; as a result, these children are to be dealt with under provincial child protection legislation, with the focus on the adequacy of the care and supervision provided by the child's parent or the person otherwise in charge of the child.

Under the Child and Family Services Act, a peace officer who believes on reasonable and probable grounds that a child actually or apparently under 12 years of age has committed an act for which a child over 12 years of age could be found guilty of a criminal offence, may apprehend the child. A warrant is not required.

That authority includes the ability to enter premises without a warrant, if the peace officer has reasonable grounds to believe a child is there, and to search for and remove the child, using force if necessary. He must exercise the power of entry in accordance with any regulations under the Child and Family Services Act.

The responsibility of the peace officer after the apprehension, unless the child is in need of protection within the meaning of the new legislation, is to return the child to his parent or any other person who had charge of the child prior to the officer's intervention and to do so as soon as practicable. Where that return is not possible within a reasonable time, or the child is otherwise in need of protection within the criteria set out by the Child and Family Services Act, the officer's responsibility is to take the child to a place of safety.

If the officer has reasonable and probable grounds to believe that no less restrictive course of action is feasible, the child may be held in an open temporary detention resource designated as a place of safety. It is the responsibility of the person in charge of the place of safety to make reasonable efforts to notify the child's parent or custodian so that the child may be returned home.

If the child cannot be returned to the parent or custodian within 12 hours of being taken to the place of safety, the Child and Family Services Act deems the child to have been apprehended as one apparently in need of protection. Though not specifically addressed by the statute, it is the Ministry's intention that the person in charge of the place of safety notify the society in his jurisdiction of the child's dilemma. The society is required to take action on the child's behalf no later than 5 days after that notification.

35. CHILDREN FOUND LOTTERING OR BREACHING CURFEW

C.F.S.A. s.75(5)

The Child and Family Services Act restructures the provisions of predecessor legislation that attached penalties to a child found loitering or in a place of public entertainment beyond curfew, to concentrate on the degree of responsibility exercised by the parent or person in charge of the child. This change in focus is consistent with the overall purpose of Part III of the Child and Family Services Act to emphasize that it is the person in charge of the child who bears responsibility for supervision and protection of the child and not the child himself.

Under the Child and Family Services Act a person having charge of a child 16 years of age or under may not permit the child between the hours of midnight and 6:00 a.m.:

- a. to loiter in a public place; or
- b. to be in a place of public entertainment unless accompanied by a responsible person over age 18, who has been appointed by the person in charge of the child.

A person who contravenes this statutory prohibition commits an offence under the Child and Family Services Act and is liable, if convicted, to a fine of up to \$1,000 and/or imprisonment for a term of up to 1 year.

The court hearing the charge may also elect to proceed as if a protection application had been filed on the child's behalf.

The Child and Family Services Act preserves the authority of a peace officer (usually a police officer) to apprehend such a child. A warrant is not required.

It is the responsibility of the police officer either to return the child to a person having charge of the child or, where this is not possible within a reasonable period of time, to take the child to a place of safety. Where no less restrictive alternative is feasible, the child may be held in a place of open temporary detention that has been designated as a place of safety. The responsibility of the person in charge of the place of safety is identical to that given in relation to the under 12's who have come into conflict with the law.

36. THE CHILD LEFT UNATTENDED

C.F.S.A. ss.75(3)(4)(7); 81(1)(f)

(1) The Offence and its Penalties

It is an offence under the Child and Family Services Act, as it was under predecessor legislation, for any person who has charge of a child less than 16 years of age to leave the child unattended, without having made "reasonable provision" for the child's supervision and care. What is "reasonable provision" is not defined by the Act. The person in charge must ensure supervision and care that is sufficient for the particular child, taking into account, for example, the child's level of maturity and the length of time he is to be left.

A person who does not make reasonable provision for the child's supervision and care commits an offence under the Child and Family Services Act and is liable, if convicted, to a fine of up to \$1,000 and/or imprisonment for a term of up to 1 year. The offence is prosecuted in the Provincial Offences Court.

If the child is less than 10 years of age, it is the responsibility of the person accused of the offence to prove to the court's satisfaction that he made

reasonable provision for the child's supervision and care in the circumstances. In other words, he is presumed not to have made reasonable provision for the child's care and supervision, until he proves to the court that he did. If, on the other hand, the child is over 10 years of age, the person charged is presumed to have made reasonable provision unless the Crown Attorney proves to the court's satisfaction that the person did not.

(2) The Court's Powers

The court adjudicating the offence may proceed as if a child protection application had been initiated on the child's behalf. This discretion was also given to the court by predecessor legislation.

37. THE HOMEMAKER ALTERNATIVE

FOR THE CHILD LEFT UNATTENDED

C.F.S.A. s.74

(1) Conditions Precedent to Homemaker Placement

C.F.S.A. s.74(1)(2)

The Child and Family Services Act preserves the authority of a children's aid society to place a homemaker in the child's home as an alternative to taking the child to a place of safety.

The new legislation allows the person investigating the alleged need for protection of a child left unattended, to remain on the premises where he has found the child or to arrange with a children's aid society for the placement of a homemaker on the premises. The person investigating must satisfy himself that:

- a. the child has been left on the premises without competent care or supervision, and is, in the person's opinion, unable to care for himself; and
- b. no person having charge of the child is available or able to consent to the placement of a homemaker on the premises.

Only homemakers approved by either a Ministry director or the local director of a children's aid society may be placed in the child's home.

(2) Society Responsibilities**C.F.S.A. s.74(5)**

If a homemaker is placed with the child in the circumstances outlined above, the children's aid society having jurisdiction in the area where the child is found must:

- a. forthwith notify the person last having charge of the child that a homemaker has been placed on the premises, or make reasonable efforts to do so;
- b. as soon as practicable, and in any event within 5 days of the placement of the homemaker, take one of the following actions:
 - (i) initiate child protection proceedings;
 - (ii) return the child to the person who last had charge of the child or alternatively to a person entitled to custody under a custody order enforceable in Ontario; or
 - (iii) negotiate a temporary care agreement;
- c. if the society initiates a protection proceeding and the child is not found to be in need of protection, ensure that the homemaker leaves the premises.

(3) Options Available to the Court**C.F.S.A. s.74(6)**

If the society initiates a protection proceeding, and the child is found to be in need of protection, the court may authorize the homemaker to remain on the premises until:

- a. a specified date not to exceed 30 days, measured from the date the court makes the order; or alternatively;
- b. until a person who is entitled to custody of the child returns to care for the child, whichever is sooner.

If a person entitled to the child's custody returns within the 30-day period, the application dies in accordance with the court's order. On the other hand, if no person entitled to custody returns to care for the child within the 30-day

period, the application is continued. It is the responsibility of the society to return to court to seek a further order to protect the child. At that time the court may either extend the order or, alternatively, hold a further protection hearing and make any of the dispositional orders permitted by the new legislation.

(4) The Homemaker's Authority

C.F.S.A. s.74(3)

The homemaker may enter and live on the premises, carry on normal housekeeping activities that are reasonably necessary for the care of the child and exercise reasonable control and discipline over the child.

(5) Protection for the Homemaker

C.F.S.A. s.74(4)

No action can be instituted against the homemaker for:

- a. entering and living on the premises;
- b. anything done or omitted in connection with normal housekeeping activities on the premises;
- c. providing goods and services reasonably necessary for the care of any child on the premises; or
- d. the exercise of reasonable control and discipline over any child on the premises, as long as the homemaker acts in good faith with reasonable care in the circumstances.

APPENDICES

<u>APPENDIX</u>	<u>TITLE</u>
1	PLACES OF TEMPORARY DETENTION
2	AFFIDAVIT OF NATURAL MOTHER
3	MOTIONS IN THE PROVINCIAL COURT (FAMILY DIVISION)
4	TRANSFER OF THE PROCEEDING TO ANOTHER DISTRICT FOR HEARING
5	EMERGENCY MOTIONS
6	THE S.52 PLAN FOR CARE THAT MUST BE FILED WITH THE COURT: A SUGGESTED APPROACH AND SOME HOPEFULLY HELPFUL HINTS
7	RULES OF THE COURT - PHILOSOPHY AND APPROACH
8	WARRANT TO SEARCH FOR AND DETAIN A CHILD UNDER PART III OF C.F.S.A.
9	THE PROTECTION APPLICATION
10	DISCLOSURE OF ONE'S CASE AND ATTEMPTS TO RESOLVE THE ISSUES
11	ASSESSMENTS
12	CONSOLIDATION/SEPARATION OF PROCEEDINGS
13	SUMMONING A WITNESS
14	PARENTAL CONTRIBUTION TO THE COST OF THE CHILD'S CARE

APPENDICES (Cont'd)

<u>APPENDIX</u>	<u>TITLE</u>
15	COURT ORDERS
16	THE STATUS REVIEW APPLICATION
17	LEGAL REPRESENTATION
18	APPLICATION FOR AN ORDER RELATING TO ACCESS
19	COSTS OF THE PROCEEDING
20	APPEALS
21	EXPLANATORY NOTE — RE: CHILD IN NEED OF PROTECTION DEFINITION

APPENDIX 1

PLACES OF TEMPORARY DETENTION DESIGNATED AS:

- o OPEN OR SECURE
- o PLACE OF SAFETY

<u>TEMPORARY DETENTION</u>	<u>OPEN (O) SECURE (S)</u>	<u>PLACE OF SAFETY</u>
<u>NORTH REGION</u>		
AWASHASLUK HOME Moosonee, Ontario	O	Yes
NIPISSING OBSERVATION AND DETENTION HOME 1150 Ferguson Street North Bay, Ontario	O	Yes
SAULT STE. MARIE OBSERVATION AND DETENTION HOME 139 Pim Street Sault Ste. Marie, Ontario	O	Yes
SUDBURY YOUTH SERVICES INC. Cottage 1 Cecil Facer Youth Centre Sudbury, Ontario	O	Yes
CECIL FACER YOUTH CENTRE Cottage 6 P.O. Box 850 Sudbury, Ontario	S	No
KENORA ASSEMBLY OF RESOURCES (S.T.E.P.) Box 268 Kenora, Ontario	O	Yes
WILLIAM W. CREIGHTON CENTRE R.R. #1 2000 Otway 20th Side Road Thunder Bay, Ontario	O	Yes

Appendix 1 (Cont'd)

<u>TEMPORARY DETENTION</u>	<u>OPEN (O) SECURE (S)</u>	<u>PLACE OF SAFETY</u>
<u>CENTRAL REGION</u>		
OBSERVATION AND DETENTION HOME - YORK 354 George Street Toronto, Ontario	S	No
OAKVILLE OBSERVATION AND DETENTION HOME 475 Iroquois Shore Road Oakville, Ontario	S	No
YORKLEA CHILDREN'S LODGES INC. 67 Everett Crescent Toronto, Ontario	O	Yes
YORKLEA CHILDREN'S LODGES INC. 207 Roxton Road Toronto, Ontario	O	Yes
MORTON YOUTH SERVICES 46 Toronto Street Barrie, Ontario	O	Yes
TORONTO GROUP HOMES - WARRENDAL 2 Warrendale Court Rexdale, Ontario	O	Yes
CASATTA YOUTH CENTRE/MILTON 115 Ontario Street South Milton, Ontario	O	Yes

Appendix 1 (Cont'd)

<u>TEMPORARY DETENTION</u>	<u>OPEN (O) SECURE (S)</u>	<u>PLACE OF SAFETY</u>
<u>SOUTHWEST REGION</u>		
HOUSE OF THE RISEN SON Lot A, Concession B Gore of Downie Perth County, Ontario	O	No
HOUSE OF THE RISEN SON 236 Front Street Stratford, Ontario N5A 4H9	O	No
REAL LIFE INC. Robert and Teresa Beer 10 Pol Court St. Thomas, Ontario N5R 3P6	O	No
LONDON JUVENILE OBSERVATION AND DETENTION HOME 1670 Oxford Street East London, Ontario	S	No
ARRELL OBSERVATION HOME FOR CHILDREN 1051 Upper James Street Hamilton, Ontario	S	No
DAVID S. HORNE OBSERVATION AND DETENTION HOME 214 Highway #20 East Fonthill, Ontario	O	Yes
DAWN PATROL 125 Victoria Avenue South Hamilton, Ontario	O	Yes
KITCHENER JUVENILE OBSERVATION AND DETENTION HOME 69 Barton Street Kitchener, Ontario	O	Yes
PINE HILL YOUTH RESIDENCE R.R. #4 Chesley, Ontario	O	Yes

Appendix 1 (Cont'd)

<u>TEMPORARY DETENTION</u>	<u>OPEN (O) SECURE (S)</u>	<u>PLACE OF SAFETY</u>
<u>SOUTHWEST REGION</u>		
COMMUNITY HOME 306 Exmouth Street Forest, Ontario	O	Yes
SPRUCEDALE TRAINING SCHOOL Simcoe, Ontario	S	No
DOVER YOUTH SERVICES R.R. #1 Dover, Ontario	O	Yes
RENAISSANCE OBSERVATION AND DETENTION HOME 867 Rossini Blvd. Windsor, Ontario	O	Yes
PARKHILL GIRLS HOME 258 Hastings Street Parkhill, Ontario	O	Yes
AUSABLE SPRINGS RANCH Box 490 Parkhill, Ontario Group Homes #1 and #3 (Lot 27) Group Home #2 (Lot 26) Concession 21 Township of W. Williams	O	Yes
COMMUNITY HOMES 555 Adelaide Street London, Ontario	O	Yes

Appendix 1 (Cont'd)

<u>TEMPORARY DETENTION</u>	<u>OPEN (O) SECURE (S)</u>	<u>PLACE OF SAFETY</u>
<u>SOUTHEAST REGION</u>		
HAROLD MC NEIL HOUSE 179 Simcoe Street South Oshawa, Ontario	O	Yes
ARGYLE YOUTH SERVICES R.R. #1 P.O. Box 2027 Peterborough, Ontario	O	Yes
CORBYVILLE CHILDREN'S HOME General Delivery Corbyville, Ontario	O	Yes
ACHIEVEMENT ST. LAWRENCE OBSERVATION AND DETENTION HOME 3 Cassidy Street Kingston, Ontario	O	Yes
OTTAWA OBSERVATION AND DETENTION 1145 Bronson Place Ottawa, Ontario	S	No
RIVERSIDE DETENTION HOME 2887 Riverside Drive Ottawa, Ontario	O	Yes
CORNWALL YOUTH RESIDENCE 444 Mercier Avenue P.O. Box 667 Cornwall, Ontario	O	Yes
ALPHA HOUSE 1346 Pembroke Street Pembroke, Ontario	O	Yes
CARR HOUSE - SOUTH Brookside School Cobourg, Ontario	S	No

APPENDIX 2

Court File No:

PROVINCIAL COURT (FAMILY DIVISION) JUDICIAL DISTRICT OF

PROVINCE OF ONTARIO)	IN THE MATTER OF THE CHILD
JUDICIAL DISTRICT OF)	AND FAMILY SERVICES ACT,
)	AND IN THE MATTER OF.....
)
)	d.o.b.:

AFFIDAVIT OF NATURAL MOTHER

(no other parent within ambit of Part III of The Child and Family Service Act)

I,, of the of
(Name) (City, Town, Village etc.) (City, Town, Village
..... in the Judicial District of MAKE
Name) (York, Peel, etc.)

OATH AND SAY AS FOLLOWS:

1. I am the natural mother of the child and as such have personal knowledge of the matters set out in this my affidavit.
2. My child was born at on 19...
(City, Town, Village Name and Country) (Date)
3. I registered my child's birth with the Office of the Registrar General at naming the child
(All given names)
- 4(a) I do not know the indentity of my child's natural father.
OR
- 4(b) The name of my child's natural father is
5. My social worker, has reviewed with me those
(Name)
categories of persons who are entitled to notice of this because they qualify as "parents" under the Child and Family Services Act.
6. I am not aware of any person who qualifies as a "parent" of my child as defined by Part III of the Child and Family Services Act, other than myself, in that:
 - No male person within the twelve month period preceding my child's admission to children's aid society care (or the filing of this application) acknowledged to me, or to the best of my knowledge to any other person or agency, that he is the child's father.
 - To the best of my knowledge no male person has provided for my child's support within the preceding twelve months, either voluntarily, by written agreement or by court order.

Appendix 2 (Cont'd)

- To the best of my knowledge no other individual is required by court order or written agreement to provide support for the child.
 - No person other than myself has legal custody or guardianship rights to my child, or a right of access either by written agreement or by court order or otherwise.
 - To the best of my knowledge no male person has acknowledged paternity to a children's aid society.
 - I am not aware of any male person who has filed a statutory declaration affirming that he is the child's father with the Registrar General as permitted by the Children's Law Reform Act, S.12.
 - I am not aware of any male person who is a "presumed" father of my child as recognized by the Children's Law Reform Act, S.8, in that;
 - I was not married during my pregnancy, nor was I married at the time of the child's birth, I have not married since my child's birth.
 - I was not cohabiting in a relationship of any permanence with any male person at the time of my child's birth, nor did I do so during my pregnancy.
 - I did not register or request registration of my child's birth jointly with any male person, as provided by the Vital Statistics Act.
 - I am not aware of any male person who has been recognized by a Canadian court to be my child's natural father.
7. To the best of my knowledge no person in the twelve month period preceding my child's admission to care (or the filing of this application with the court) has demonstrated a settled intention to treat my child as a child of his/her own family.

I make this affidavit for the purpose of establishing, to the best of my knowledge and belief, that there is no "parent" of the child, other than myself, recognized by Part III of The Child and Family Services Act, and for no other purpose or motive.

SWORN BEFORE ME, at the)
(City, Town, or)

..... of)
(Village) (Name)

in the Judicial District of)

this day of, 198.....)
)
)
)
)
A Commissioner, etc.)

(Signature of Mother)

APPENDIX 3

MOTIONS IN THE PROVINCIAL COURT (FAMILY DIVISION)

(Rules of the Court)

Introduction

This appendix gives guidance in the following matters:

- . Request to transfer the proceeding to another district
- . Request to dispense with notice to the child
- . Request for assessment order
- . Request concerning disclosure of an assessment report to the child
- . Request concerning persons who may be present at a hearing
- . Request for access order, where a Protection or Status Review application has been filed and has not been concluded
- . Request for production of records required in connection with an abuse investigation
- . Request for parental contribution to cost of child's care
- . Exclusion of the child from the hearing
- . Request to vary court order reserving to parent(s) the right to consent to medical treatment
- . Any other request that is ancillary to the determinations of the main issue in a proceeding

Contents

- . Issues to be Disposed of by Motion
- . The Mode of Request
- . The Approach to the Motion
- . Proceeding by Written Motion
 - . Generally
 - . Forms to be Used
 - . Parties to the Motion
 - . Notice to be Given to the Parties
 - . Permitted Methods of Serving Documents in Support of the Motion
 - . Serving the Mentally Incompetent Person
 - . Proof of Service or of Effort to Serve
 - . Inability to Serve Documents
- . Proceeding by Oral Motion
 - . Permissible Circumstances
- . Place Where Motion to be Heard
- . Evidence in Support of Motion
- . Court's Discretion to Make Order on Consent Without a Hearing
- . Obtaining the Court Order

Appendix 3 (Cont'd)

PROTECTION ISSUES TO BE DISPOSED OF BY MOTION

- Rule 60 Where a party makes a request for an order that is ancillary to the determinations of the main issue in a proceeding, the request shall be made by motion.

THE APPROACH TO THE MOTION

- Rule 4 These rules shall be construed liberally so as to secure an inexpensive and expeditious conclusion of every proceeding consistent with a just determination of the proceeding.
- Rule 5 In any matter not provided for by these rules, the practice of the court shall be regulated by analogy to these rules and to the Act governing the proceeding and the court on motion without notice may give directions.
- Rule 6 Where a party fails to comply with these rules, the court, upon such terms as the court considers proper, may grant such relief from the non-compliance as the court considers necessary to secure the just determination of the matter in dispute.

PROCEEDING BY WRITTEN MOTION

Generally

- Rule 16(1) A motion within a proceeding shall be commenced by serving and filing a notice of motion and an affidavit in the prescribed form, together with any other evidence on the motion, where practicable, . . .

In these Rules,

- Rule 1(c) "file" means file in the office of the clerk;
- Rule 1(a) "clerk" means a clerk of the court;
- Rule 1(ba) "court" means the Provincial Court (Family Division) in the county in which the proceeding is pending;
- Rule 1(e) "prescribed" means prescribed in these rules;

Forms to be Used

- Rule 58(4) Notice of Motion - Form 24
- Rule 58(3) Affidavit in support of Motion - Form 22
- Rule 3 The forms authorized by these rules shall be used where applicable and with such variations as the circumstances require.

Appendix 3 (Cont'd)

Parties to the Motion

- Rule 1(d) "party" means a party to a proceeding and includes a person who is entitled to notice of a proceeding, but does not include a foster parent;
- Rule 1(f) "proceeding" means a proceeding in the court.
- Rule 10 The court may order that any person whose presence as a party is necessary to determine the matters in issue shall be added as a party.

Notice to be Given to the Parties

- Rule 16(2) A notice of motion shall be served at least three days before the date on which the motion is to be heard.
- Rule 8 The court, at anytime, may lengthen or shorten a period of time prescribed by these rules or by an order of the court upon such terms as the court considers proper in the circumstances.

Permitted Methods of Serving the Documents in Support of the Motion

- Rule 13(1) . . . service of a document in a proceeding may be made in or out of Ontario.
- (a) by leaving a copy of the document with the person to be served;
 - (b) by leaving a copy of the document with a person apparently sixteen years of age or over at the place where the person to be served is residing;
 - (c) by sending a copy of the document together with a prepaid return postcard in Form 1 by ordinary mail in an envelope, bearing the return address of the sender and addressed to the person to be served, but service under this clause is not valid unless the return postcard signed by the person to be served is received by the clerk;
 - (d) by leaving a copy of the document at the address for service shown on the latest document filed by the person to be served in the same or any other proceeding in the court;
 - (e) by sending a copy of the document by ordinary mail addressed to the person to be served at the person's address for service shown on the latest document filed by the person in the same or any other proceeding in the court; or

Appendix 3 (Cont'd)

- (f) by delivering or sending by ordinary mail a copy of the document to the person acting in the proceeding for the person to be served.
- Rule 13(2) In addition to the methods set out in subrule (1), service of a document in a proceeding under the Child Welfare Act on a Director or foster parent within the meaning of that Act or a children's aid society may be made by sending a copy of the document by ordinary mail addressed to the person to be served at his place of business or, in the case of a foster parent, at his residence.
- Rule 13(5) Service of a document in a proceeding, other than a notice of motion to issue a warrant for arrest or to find a person in contempt of court, is not required where a solicitor accepts service and undertakes to act on behalf of the person to be served.
- Rule 13(6) Where service of a document on a corporation is to be made by leaving a copy of the document with the corporation, the copy of the document may be left with an officer, director or agent of the corporation.
- Rule 13(7) Where a copy of a document has been mailed, it shall be deemed to have been served on the fifth day following the day on which it was mailed, unless the contrary is shown.
- Rule 13(8) Notwithstanding that a document in a proceeding has been served under subrule (1) or (2), the court at any time may order that the document be served by leaving a copy of the document with the person to be served.

Serving the Mentally Incompetent Person

- Rule 13(4a) Where a person who is to be served with a document is mentally incompetent, the document shall not be served on the person but shall be served in accordance with subrules (1) to (4) on the committee of the person's estate or, where there is none, on the Public Trustee.

Proof of Service or of Efforts to Serve

- Rule 13(9) Proof of services or of efforts to make service may be given by affidavit, in the absence of an admission of service. R.R.O. 1980, Reg. 810, r. 13(9).
- Rule 59(1) An affidavit of service shall be in Form 24.

Appendix 3 (Cont'd)

PROCEEDING BY ORAL MOTION

Permitted Circumstances

Rule 16(1) . . . where

1. all parties are present
or
2. all parties are represented
or
3. all parties have been served with notice of the hearing at which a motion is to be made
or
4. in any other circumstances where the court considers it appropriate, the court may permit a party to make a motion orally.

PLACE WHERE MOTION TO BE HEARD

Rule 17a A motion on notice shall be heard in the county where the proceeding is to be heard unless the court orders or the parties agree otherwise.

Rule 17b Where the parties and the judge hearing a motion consent, a motion may be heard by means of a conference telephone call.

EVIDENCE IN SUPPORT OF THE ORDER

Rule 18 Evidence on a motion may be given,

- (a) by affidavit;
- (b) in the form of a transcript of the examination of a witness summoned under rule 25; and
- (c) with the permission of the court, orally.

COURT'S DISCRETION TO MAKE ORDER ON CONSENT WITHOUT A HEARING

Rule 24 Subject to rule 70, the court may make any order authorized by these rules or the Act governing the proceeding on consent of the parties without a hearing.

OBTAINING THE COURT ORDER

Rule 28(1) On request of a party or by direction of the court, an order of the court shall be issued in the prescribed form by the clerk under the seal of the court.

Rule 73(1) Prescribed form: Form 34 (general form of order).

Rule 28(2) An order may be signed by the judge who made it or by the clerk.

Appendix 3 (Cont'd)

INABILITY TO SERVE DOCUMENTS:
REQUEST TO THE COURT TO DISPENSE WITH NOTICE
OR TO ORDER SUBSTITUTED SERVICE

(Rules of the Court)

The Mode of Request

Rule 14(1) Motion without notice.

Forms to be Used

Rule 58(4) Notice of Motion – Form 24

Rule 58(3) Affidavit in Support of Motion – Form 22

Rule 3 The forms authorized by these rules shall be used where applicable and with such variations as the circumstances require.

Notice to be Given

Rule 14(1) None.

What Must be Proved

Rule 14(1) . . . the court (must be) satisfied

1. that reasonable efforts have been made, without success, to serve a document
- or
2. that such reasonable efforts would not be successful.

The Court's Power

Rule 14(1) . . . where . . . the court is (so) satisfied . . ., the court

1. may order substituted service of the document in such manner as the court directs
- or
2. may dispense with service upon such terms as the court considers proper in the circumstances.

Rule 14(3) Where the court orders service by advertisement, the advertisement shall be in Form 2.

APPENDIX 4

TRANSFER OF THE PROCEEDING TO **ANOTHER DISTRICT FOR HEARING**

(Rules of the Court)

- Rule 67 (1) Notice of a motion to transfer a proceeding under Part III of the Act to another county shall be served on the children's aid society in the other county.

APPENDIX 5

EMERGENCY MOTIONS

Proceeding by Oral Motion

Rule 16(1) . . . where

1. all parties are present
or
2. all parties are represented
or
3. all parties have been served with notice of the hearing at which a motion is to be made
or
4. in any other circumstances where the court considers it appropriate, the court may permit a party to make a motion orally.

Proceeding without Notice

Rule 17 Where the court is satisfied that the circumstances of the case are urgent and that the delay necessary to serve notice of a motion or the serving of notice of a motion might have serious consequences, the court may make without notice any one or more of the following orders:

1. An order on motion.
2. An order that the hearing be expedited.
3. An order fixing the day for hearing.

Proceeding with Oral Evidence

Rule 18 Evidence on a motion may be given,

- (a) . . .
- (b) . . .
- (c) with the permission of the court, orally.

Appendix 5 (Cont'd)

Special Requirements for Orders Made on Motion Without Notice

- Rule 72(1) Where the court makes an order on motion without notice, the clerk shall issue the order under the seal of the court in Form 33 (general form of order).
- Rule 72(2) An order referred to in subrule (1) and any material filed on the motion for the order shall be served together within such period of time as the court directs on every party other than the party who made the motion.
- Rule 72(3) The court may make an order dispensing with any provision of subrules (1) and (2).
- Rule 72(4) On motion made by a person named in an order referred to in subsection rule (1) within seven days after the order came to the attention of the person, the court may vary or discharge the order.

APPENDIX 6

THE S.52 PLAN FOR CARE THAT MUST BE FILED WITH THE COURT: A SUGGESTED APPROACH AND SOME HOPEFULLY HELPFUL HINTS

1. The plan for care is to be filed at the time the society is seeking one of the following orders for the child:
 - a) C.A.S. supervision, child with parent or another person
 - b) Society wardship
 - c) Crown wardship
 - d) Society wardship to be followed by a return of the child to parent or another person, with a period of C.A.S. supervision.
2. The Act does NOT require the society to file with the court a written plan for the child's care if the matter is on adjournment, and the order requested of the court is an INTERIM supervision or wardship order pending completion of the court proceeding. This plan may be given in verbal testimony before the court.
3. If the society wishes, it may file with the court an interim plan for the child's care pending completion of the court's hearing of the application. There is nothing in the C.F.S.A. or the court rules to forbid this.
4. The plan for care may include whatever is relevant to the particular child's situation, but at minimum it must address the criteria specified by section 52; i.e. -
 - " a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found to be in need of protection;
 - b) a statement of the criteria by which the society will determine when its wardship or supervision is no longer required;
 - c) an estimate of the time required to achieve the purpose of the society's intervention;
 - d) where the society proposes to remove or has removed the child from a person's care,
 - (i) an explanation of why the child cannot be adequately protected while in the person's care, and a description of any past efforts to do so, and
 - (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the person; and

Appendix 6

Suggested Plan of Care (Cont'd)

- e) where the society proposes to remove or has removed the child from a person's care permanently, a description of the arrangements made or being made for the child's long-term stable placement."
5. To the maximum extent possible, the plan of care is to be developed with the input of the child and his family - ie, ensuring that the child and parents have an opportunity to have their views and perceptions considered in the planning for the child.
6. The initial plan of care and all subsequent reviews and revision of that plan should be kept in the family service file and in the child's file (if a separate file is maintained) for ease of reference, and to monitor the development of the child and family in relation to the plan.
7. A copy of the plan should be given to each person who had a part to play in achieving the goals set out in it.
8. The service set out in the plan should reflect specific, reasonable and attainable goals.
9. **Suggested Format**

a) The condition or situation that is the basis of the child's need for protection:

- . Set out here the reason(s) for the society's intervention with the child and the family;
- . Be specific and concise.

b) Services to be provided to attempt to remedy the condition or situation:

- . Consider placing this requirement in a casework framework for clarity and to visibly present to the Court the expected participation of stated individuals in the effort to make change.

e.g.	<u>Service</u>	<u>Goal or Objectives</u>	<u>Task to be undertaken to reach the objective</u>
			i.e. Parent will Child will Caseworker will

This has the benefit of acknowledging and recognizing those persons who are an integral part of the process of resolving the particular problem(s) that is at the basis of the child's need for protection.

Appendix 6

Suggested Plan of Care (Cont'd)

Phrase objectives in positive language - describing behaviour to be increased or acquired, and how that is to be accomplished. Remember it is often easier to decrease undesired behaviour by increasing desired behaviour.

Keep in mind that involvement of community resources should be specified only if the resource has agreed to provide the service the society wishes to set out in the plan (eg. public health, Red Cross, homemaking involvement).

c) Criteria by which the society will determine when its intervention is no longer required:

This basically addresses the specific conditions that must be achieved by parent(s) and/or child to allow the society to close the file.

Set out here what the parent(s) and/or child will be doing differently or what specific changes are expected in the parent's or child's circumstances to allow return of the child to their care. Keep in mind that the parent has a right to know what must be different in his/her life before the child can be reintegrated to the family.

The more vague the criteria, the more vulnerable the plan is to misunderstandings between caseworker and family. For example, be cautious with words that mean different things to different people (eg. "adequate"). Define in concrete terms.

d) Estimated time to achieve the purpose of CAS intervention.

- . Keep in mind here that the Act requires only an estimate, and it should be a reasonable one, given the capabilities of the parent(s) and/or child. However, the parent's sense of time in achieving the goals set out in the plan must be weighed against the child's sense of time, and any estimate of time to achieve the purposes of the plan should be determined with the following consideration firmly in mind: how long can the child reasonably wait for resolution of the protection issues that make intervention by a children's aid society necessary.
- . The motivation of a parent and/or child to follow through with the plan can only really be shown by their involvement or lack of involvement in the efforts to resolve the child's need for protection. The important factor is that the client is being given an opportunity to do so.
- . The skills and resources of the parent are important considerations in estimating the time he/she will require to meet the specific objectives of the plan.

Appendix 6

Suggested Plan of Care (Cont'd)

- . If the plan for care has as its stated goal long-term planning for the child through crown wardship or adoption, the estimated time should address the time required:
 - to obtain a long-term placement for the child
 - for separation visits with family, or
 - alternatively, where contact with family is to be maintained, estimated time required to assist child and parent in preparing for their new relationship
 - for introduction of the child to his "new" family
- e) Reasons for care by someone other than child's usual custodian:**
 - . Set out here specific facts indicating why the child cannot be adequately protected with at-home services.
 - . Summarize past efforts, if any, to maintain the child at home:
i.e. - identify effort
 - over what period of time
 - person/resource who made the effort
 - what happened
- f) Access arrangements planned (if any) to maintain child's contact with his usual custodian:**
 - . The focus here is on the planning around access, i.e. visits should have a purpose.
 - . Efforts to maintain access should be tied closely to the overall goals of the planning to reintegrate the child with his family:
 - frequency of visits
 - nature of visit (in child's home, in foster home, in CAS offices, parent-child outing etc.)
 - supports to be offered around visits
 - extent and goal of supervision
 - person responsible for arranging visits (ie. contact person for parent)

APPENDIX 7

RULES OF THE COURT - PHILOSOPHY AND APPROACH

- Rule 3 The forms authorized by (these) Rules shall be used where applicable and with such variations as the circumstances require.
- Rule 4 These rules shall be construed liberally so as to secure an inexpensive and expeditious conclusion of every proceeding consistent with a just determination of the proceeding.
- Rule 5 In any matter not provided for by these rules, the practice of the court shall be regulated by analogy to these rules and to the Act governing the proceeding and the court on motion without notice may give directions.
- Rule 6 Where a party fails to comply with these rules, the court, upon such terms as the court considers proper, may grant such relief from the non-compliance as the court considers necessary to secure the just determination of the matter in dispute.

APPENDIX 8

WARRANT TO SEARCH FOR AND DETAIN A CHILD UNDER PART III OF C.F.S.A.

(Rules of the Court and Suggested Practice)

Rule 65 A warrant to search for and detain a child shall be in Form 32 and an information to obtain such a warrant shall be in Form 32A.

WARRANTS ARE ISSUED BY A JUSTICE OF THE PEACE

HERE IS WHAT YOU DO:

1. Telephone the Court to make an appointment with a Justice of the Peace.
2. Set out in the Information (Form 32A) the essential reasons you are seeking the warrant. The J.P. must be satisfied that the facts you give are reasonable and probable ones for believing the child to be in need of protection, and that no less restrictive course of action is available or will protect the child adequately.
3. Attend before the J.P. at the time and place arranged and swear to your belief of the facts contained in the information. Have with you:
 - (a) the original and two copies of the Information
 - (b) the original and two copies of the warrant, ready for the signature of the J.P.
4. The warrant must be executed (used) before the expiry date stated on it.
5. If resistance is encountered or anticipated, seek the assistance of the police to keep the peace while you are attending the premises with the warrant.

NOTE: Anyone who attempts to obstruct or interfere with a person authorized to apprehend a child commits a criminal offence and is liable on conviction to a fine of up to \$1,000.00 or to imprisonment for a term up to 1 year, or both.

6. Show the original of the warrant and leave a copy with the person from whom the child is being apprehended. (The second copy is for your file. The original should go to your lawyer or court worker.) Take the apprehended child to a place of safety.
7. Notify your lawyer or court worker as soon as possible whether the matter is to proceed to Court on a Protection Application, or what alternative action you have taken.

APPENDIX 9

THE PROTECTION APPLICATION

(Rules of the Court)

Re: Issuing and Serving

Initiating the Application

- Rule 11 A proceeding shall be commenced by filing an application in the prescribed form.
- Rule 1(e) "prescribed" means prescribed in these rules.
- Rule 1(c) "file" means file in the office of the clerk.
- Rule 1(a) "clerk" means a clerk of the court.
- Rule 1(ba) "court" means the Provincial Court (Family Division) in the county (district or judicial district) in which the proceeding is pending.
- Rule 1(f) "proceeding" means a proceeding in the court.

Approach to the Application in the Provincial Court (Family Division)

- Rule 4 These rules shall be construed liberally so as to secure an inexpensive and expeditious conclusion of every proceeding consistent with a just determination of the proceeding.
- Rule 5 In any matter not provided for by these rules, the practice of the court shall be regulated by analogy to these rules and to the Act governing the proceeding and the court on motion without notice may give directions.
- Rule 6 Where a party fails to comply with these rules, the court, upon such terms as the court considers proper, may grant such relief from the non-compliance as the court considers necessary to secure the just determination of the matter in dispute.

Forms Required

- Rule 58(2) Notice of Hearing - Form 20A (Form 0471 (U.F.C.))
- Rule 58(1) Protection Application - Form 21 (Form 0469 (U.F.C.))
- Rule 3 The forms authorized by these rules shall be used where applicable and with such variations as the circumstances require.

Appendix 9 (Cont'd)

What Transpires When the Application is Filed with the Court

Rule 12 Upon the commencement of a proceeding, the clerk shall set a day for hearing, issue a notice of hearing in the prescribed form and seal the notice of hearing and the application with the seal of the court.

Note:

When the applicant files the completed application, the court clerk inserts the date on the applicant's partially completed Notice of Hearing, indicating the first appearance in the proceeding. The Notice of Hearing and the Protection application are then sealed with the seal of the court.

Special Exemption for Protection Applications, if desired

Rule 66 Notwithstanding rules 11 and 12, in an application for an order finding a child to be a child in need of protection, the application and notice of hearing may be served without being issued by the clerk under the seal of the court if they are filed at or before the hearing required by the Act.

Giving Notice to All Necessary Parties

Rule 64 In a proceeding . . . the application and notice of hearing shall be served on every party other than the applicant and on a foster parent who is entitled under the Act to notice of the hearing.

Note:

The applicant retains the original of these two documents and serves a copy of each document on every person who is entitled to formal notice of the proceeding.

Requirement of Personal Service of Protection Application

Rule 13(3) In an application for an order under the Child Welfare Act finding a child to be a child in need of protection, service of the application and notice of hearing on the child, a parent as defined by that Act or a person having actual custody of the child shall be made by leaving a copy with the person to be served unless the court orders otherwise.

Rule 59(1) An affidavit of service shall be in Form 24.

Appendix 9 (Cont'd)

**Inability to Serve Before
the Day Set for Hearing**

Rule 15 Where an application has not been served before the day set for hearing, upon the request of the applicant the clerk shall set a new day for hearing and issue a new notice of hearing under the seal of the court.

APPENDIX 10

DISCLOSURE OF ONE'S CASE AND ATTEMPTS TO RESOLVE THE ISSUES

- Rule 21 The parties shall hold such informal discussions as are reasonably possible for the purpose of resolving or narrowing the issues in dispute as soon as reasonably possible after the commencement of the proceeding.
- Rule 22 As soon as reasonably possible after the commencement of a proceeding, the judge presiding on a motion or at the hearing shall inquire whether or not attempts have been made to resolve or narrow the issues in dispute, which issues have been resolved or narrowed and whether settlement by the parties of the issues remaining in dispute is likely.
- Rule 20(1) On motion, the court may order a party or any other person to disclose facts relating to any matter in issue in the proceeding by one or more of the following means:
1. An affidavit providing the facts.
 2. An affidavit answering specific questions stated in the order.
 3. An affidavit answering questions submitted in writing by a party.
 4. Submission to oral examination under oath.
 5. An affidavit specifying relevant documents.
 6. The production of relevant documents.
 7. Any other means specified in the order.
- Rule 20(2) In an order under subrule (1), the court may impose such terms and give such directions as the court considers proper in the circumstances.
- Rule 20(3) A party may use in evidence at a hearing any part of the affidavit or examination under oath of an opposite party and where the court is of the opinion that the part ought not to be used except with another part of the affidavit or examination, the court may direct that the other part be put in evidence.

Appendix 10 (Cont'd)

Pretrial Conferences

- Rule 23(1) For the purpose of resolving or narrowing the issues or of settling the procedures at a hearing, the court, at any stage in the proceeding, may convene one or more meetings of the parties before a judge of the court or a person designated by the court.
- Rule 23(2) The person before whom a meeting under subrule (1) is convened shall present to the parties, for their approval in writing, a memorandum of the matters agreed upon by the parties at the meeting and the person shall file the memorandum unless the parties file a consent to an order.
- Rule 23(3) A judge before whom a meeting under subrule (1) is convened shall not preside at the hearing without the consent of the parties.

APPENDIX 11

ASSESSMENTS

(Rules of the Court)

- Rule 71 Where the report of an assessment ordered under section 50 of the Act is filed, a party may summons as a witness and cross-examine the person who made the assessment and may give evidence in reply.

APPENDIX 12

CONSOLIDATION/SEPARATION OF PROCEEDINGS

(Rules of the Court)

- Rule 19(1) Where two or more issues are joined in one proceeding and the court is of the opinion that the issues cannot conveniently be disposed of in one proceeding, the court may order that one or more of the issues be disposed of in a separate proceeding.
- Rule 19(2) Where the court is of the opinion that two or more proceedings could be more conveniently disposed of in one proceeding, the court may order that the proceedings be consolidated.

APPENDIX 13

SUMMONING A WITNESS

(Rules of the Court)

- Rule 25(1) On request of a party, the clerk shall issue a summons to a witness in the prescribed form.
- Rule 25(2) Subrule (1) applies (in addition to the provision in the Child and Family Services Act governing the issue of a summons to a witness).
- Rule 25(3) A summons to a witness shall be served on the witness together with the witness fee prescribed in the Tariff.
- Rule 59(2) A summons to a witness shall be in Form 25.

Tariff under the Rules of the Provincial Court (Family Division) — Item 15, Part II – Disbursements

Attendance money actually paid to a witness, to be calculated as follows:

- (a) attendance allowance for each day of necessary attendance\$50
- (b) travel allowance, where the hearing or examination is held,
- (i) in a city or town in which the witness resides, \$3.00 for each day of necessary attendance;
 - (ii) within 300 kilometers of where the witness resides, 24 cents a kilometer each way between his or her residence and the place of hearing or examination
 - (iii) more than 300 kilometers from where the witness resides, the minimum return air fare plus 24 cents a kilometer each way from his or her residence to the airport and from the airport to the place of hearing or examination.
- (c) overnight accommodation and meal allowance, where the witness resides elsewhere than the place of hearing or examination and is required to remain overnight, for each overnight stay\$75

Appendix 13 (Cont'd)

- Rule 22 For an expert who gives opinion evidence at the hearing or whose attendance was reasonably necessary at the hearing, a reasonable amount not exceeding \$350 a day, subject to increase in the discretion of the person determining costs.
- Rule 20 For experts' reports that were supplied to the other parties as required by the Evidence Act or these rules and that were reasonably necessary for the conduct of the proceeding, a reasonable amount.

Witness' Failure to Attend

- Rule 26(1) Where the court is satisfied that a summons to a witness and the prescribed witness fee were served on a witness who failed to attend or to remain as required by the summons and that the presence of the witness is necessary for the determination of an issue in a proceeding, the court may issue a warrant in Form 3 for the arrest of the witness and may cause him to be brought before the court, be held in custody until the hearing in the proceeding or be released on such terms as are contained in the warrant or as the court considers proper.
- Rule 26(2) Where the warrant contains a provision for release on completion of a promise to appear, the promise to appear shall be in Form 3A.

Witness' Inability to Attend

- Rule 27 The court may order that a witness who is incapable of attending or is otherwise not available to attend a hearing be examined under oath before a person named in the order at a place named in the order and may receive the transcript of the examination in evidence.

APPENDIX 14

PARENTAL CONTRIBUTION TO THE

COST OF THE CHILD'S CARE

(Rules of the Court)

If this "corollary" order is requested in the Protection or Status Review applications that is pending, the issue is properly before the court and may be determined as part of the court's decision-making on the entire application.

Evidence addressing the parent's ability to contribute to the cost of the child's care is, as a general rule, introduced after the evidence directed to the specific order of care recommended for the child.

Where the Protection or Status Review proceeding has been concluded, and the society then wishes to seek a parental contribution order, the request is brought before the court by motion.

APPENDIX 15

COURT ORDERS

(Rules of the Court)

Obtaining the Order

- Rule 28(1) On request of a party or by direction of the court, an order of the court shall be issued in the prescribed form by the clerk under the seal of the court.
- Rule 28(2) An order may be signed by the judge who made it or by the clerk.

Note:

The usual practice is that the successful party prepares the court order in draft, using the prescribed form, and submit the draft to the clerk of the court for approval. The draft order, once approved, is signed either by the judge or by the clerk. The original is given to the successful party, and a sufficient number of certified copies is requested to enable each of the other parties to have a copy.

Form of Order

- Rule 73(1) Protection order – Form 34A
- Rule 73(1) Status Review order – Form 34A

Serving the Court Order on the Other Parties

The court order may be served on the other parties by any of the following methods:

- Rule 13(1) Subject to subrule (4), service of a document in a proceeding may be made in or out of Ontario
- (a) by leaving a copy of the document with the person to be served;
 - (b) by leaving a copy of the document with a person apparently sixteen year of age or over at the place where the person to be served is residing;
 - (c) by sending a copy of the document together with a prepaid return postcard in Form 1 by ordinary mail in an envelope, bearing the return address of the sender and addressed to the person to be served, but service under this clause is not valid unless the return postcard signed by the person to be served is received by the clerk;

Appendix 15 (Cont'd)

- (d) by leaving a copy of the document at the address for service shown on the latest document filed by the person to be served in the same or any other proceeding in the court;
- (e) by sending a copy of the document by ordinary mail addressed to the person to be served at his address for service shown on the latest document filed by him in the same or any other proceeding in the court; or
- (f) by delivering or sending by ordinary mail a copy of the document to the person acting in the proceeding for the person to be served.

Rule 13(2) In addition to the methods set out in subrule (1), service of a document in a proceeding under The Child and Family Service Act on a director or foster parent within the meaning of the Act or a children's aid society may be made by sending a copy of the document by ordinary mail addressed to the person to be served at his place of business or, in the case of a foster parent, at his residence.

Rule 13(3) (not applicable to status review applications)

Rule 13(4) (not applicable)

Rule 13(4a) Where a person who is to be served with a document is mentally incompetent, the document shall not be served on the person but shall be served in accordance with subrules (1) to (4) on the committee of the person's estate or, where there is none, on the Public Trustee.

Rule 13(5) Service of a document in a proceeding, other than a notice of motion to issue a warrant for arrest or to find a person in contempt of court, is not required where a solicitor accepts service and undertakes to act on behalf of the person to be served.

Rule 13(6) Where service of a document on a corporation is to be made by leaving a copy of the document with the corporation, the copy of the document may be left with an officer, director or agent of the corporation.

Rule 13(7) Where a copy of a document has been mailed, the document, unless the contrary is shown, shall be deemed to have been served on the fifth day following the day on which it was mailed.

Rule 13(8) Notwithstanding that a document in a proceeding has been served under subrule (1), (2) or (4), the court at any time may order that the document be served by leaving a copy of the document with the person to be served.

Appendix 15 (Cont'd)

Special requirement for Crown Wardship Orders

Rule 73(2) An order for Crown wardship shall be served on the parties and a director.

APPENDIX 16

THE STATUS REVIEW APPLICATION

(Rules of the Court)

- Rule 11 A proceeding shall be commenced by filing an application in the prescribed form.
- Rule 1(e) "prescribed" means prescribed in these rules.
- Rule 1(c) "file" means file in the office of the clerk.
- Rule 1(a) "clerk" means a clerk of the court.
- Rule 1(ba) "court" means the Provincial Court (Family Division) in the county (district or judicial district) in which the proceeding is pending.
- Rule 1(f) "proceeding" means a proceeding in the court.

Forms Required

- Rule 58(2) Notice of Hearing – Form 21.
- Rule 58(1) Status Review application – Form 20B.
- Rule 3 The forms authorized by these rules shall be used where applicable and with such variations as the circumstances require.

What Transpires When the Application is Filed with the Court

- Rule 12 Upon the commencement of a proceeding, the clerk shall set a day for the hearing, issue a notice of hearing in the prescribed form and seal the notice of hearing and the application with the seal of the court.

Note:

When the applicant files the completed application, the court clerk inserts the date on the applicant's partially completed notice of hearing, indicating the first appearance in the proceeding. The notice of hearing and the Protection application are then sealed with the seal of the court.

Appendix 16 (Cont'd)

Giving Notice to All Necessary Parties

Rule 64 In a proceeding . . . the application and notice of hearing shall be served on every party other than the applicant and on a foster parent who is entitled under the Act to notice of the hearing.

Note:

The applicant retains the original of these two documents and serves a copy of each document on every person who is entitled to formal notice of the proceeding.

Permitted Methods of Service

- Rule 13(1) Subject to subrule (4), service of a document in a proceeding may be made in or out of Ontario
- (a) by leaving a copy of the document with the person to be served;
 - (b) by leaving a copy of the document with a person apparently sixteen years of age or over at the place where the person to be served is residing;
 - (c) by sending a copy of the document together with a prepaid return postcard in Form 1 by ordinary mail in an envelope, bearing the return address of the sender and addressed to the person to be served, but service under this clause is not valid unless the return postcard signed by the person to be served is received by the clerk;
 - (d) by leaving a copy of the document at the address for service shown on the latest document filed by the person to be served in the same or any other proceeding in the court;
 - (e) by sending a copy of the document by ordinary mail addressed to the person to be served at his address for service shown on the latest document filed by him in the same or any other proceeding in the court; or
 - (f) by delivering or sending by ordinary mail a copy of the document to the person acting in the proceeding for the person to be served.
- Rule 13(2) In addition to the methods set out in subrule (1), service of a document in a proceeding under The Child and Family Service Act on a director or foster parent within the meaning of the Act or a children's aid society may be made by sending a copy of the document by ordinary mail addressed to the person to be served at his place of business or, in the case of a foster parent, at his residence.

Appendix 16 (Cont'd)

- Rule 13(3) (not applicable to status review applications)
- Rule 13(4) (not applicable to applications)
- Rule 13(4a) Where a person who is to be served with a document is mentally incompetent, the document shall not be served on the person but shall be served in accordance with subrules (1) to (4) on the committee of the person's estate or, where there is none, on the Public Trustee.
- Rule 13(5) Service of a document in a proceeding, other than a notice of motion to issue a warrant for arrest or to find a person in contempt of court, is not required where a solicitor accepts service and undertakes to act on behalf of the person to be served.
- Rule 13(6) Where service of a document on a corporation is to be made by leaving a copy of the document with the corporation, the copy of the document may be left with an officer, director or agent of the corporation.
- Rule 13(7) Where a copy of a document has been mailed, the document, unless the contrary is shown, shall be deemed to have been served on the fifth day following the day on which it was mailed.
- Rule 13(8) Notwithstanding that a document in a proceeding has been served under subrule (1), (2) or (4), the court at any time may order that the document be served by leaving a copy of the document with the person to be served.

Proving Service

- Rule 13(9) Proof of service or of efforts to make service may be given by affidavit, in the absence of an admission of service.

Inability to Serve Before the Day Set for Hearing

- Rule 15 Where an application has not been served before the day set for hearing, upon the request of the applicant the clerk shall set a new day for hearing and issue a new notice of hearing under the seal of the court.

APPENDIX 17

LEGAL REPRESENTATION

(Rules of the Court)

Permitted Representation

- Rule 9 A party may be represented in a proceeding by any of the following:
1. A barrister and solicitor.
 2. A student-at-law while under articles, unless the court orders otherwise.
 3. With the permission of the court, a law student who is enrolled in a university approved by the Law Society of Upper Canada and who is engaged in a legal clinic program under the supervision of a barrister and solicitor.
 4. With the permission of the court, any other person.

Representation of a Minor or a Party under Mental Disability

- Rule 9a(1) Subject to subsection 19(4) and section 20 of the Child Welfare Act, where the court is satisfied that a party,
- (a) is a minor or is under a mental disability; and
 - (b) requires representation in the proceeding by reason of that fact,
- the court shall give such directions for the representation of the party it considers appropriate.
- Rule 9a(2) Directions for representation under subrule (1) shall be given only on notice of motion to the party and to such persons as the court requires.

Changing Solicitors or Agents

- Rule 33(1) A party acting by a solicitor or agent may change his solicitor or agent or may act in person by filing a notice of change of solicitor or agent containing the consent of the new solicitor or agent to act.
- Rule 33(2) A party acting in person may appoint a solicitor or agent by filing a notice of appointment containing the consent of the solicitor or agent to act.
- Rule 33(3) A notice filed under subrule (1) or (2) shall be served on every other party.

APPENDIX 18

APPLICATION FOR AN ORDER RELATING TO ACCESS

(Rules of the Court)

- Rule 11 A proceeding shall be commenced by filing an application in the prescribed form.
- Rule 58(1) An application filed to commence a proceeding shall be in Form 20 (general application)
- Rule 58(2) A notice of hearing shall be in Form 21
- Rule 12 Upon the commencement of a proceeding the clerk (of the court) shall set a day for hearing, issue a notice of hearing in the prescribed form (Form 21) and seal the notice of hearing and the applications with the seal of the court.

Note:

These are the documents used to initiate an application for access, when there is not an active protection or status review application before the court, i.e. the child is in the care and custody of a children's aid society or under its supervision pursuant to an order under s.53 of the Act.

The application and notice of hearing issued must be served on those persons entitled to notice of the proceeding. See C.F.S.A. s.54(4)

Appendix 19 (Cont'd)

T A R I F F

PART I — SOLICITOR'S FEES

<u>Item</u>	<u>Amount</u>
1. Application, answer and reply, up to	\$100
This item includes all services, except motions, up to and including service and filing of a reply.	
An increased fee may be allowed in the discretion of the person determining costs, up to	
	\$350
2. Financial statements, up to	\$100
An increased fee may be allowed in the discretion of the person determining costs.	
3. Disclosure of documents, up to	\$100
This item includes affidavits of documents, requests to inspect, production for inspection and inspection.	
An increased fee may be allowed in the discretion of the person determining costs.	
4. Setting down for hearing	\$30
5. Pre-motion conference	\$75
This item includes preparation and counsel fee.	
An increased fee and a fee to junior counsel may be allowed in the discretion of the person determining costs.	
6. Motion, up to	\$75
This item includes notice of motion, affidavits, preparation, counsel fee and signing the order.	
An increased fee and a fee to junior counsel may be allowed in the discretion of the person determining costs.	
7. Examination, up to	\$100
This item applies to each oral examination out of court, including preliminary steps, preparation and counsel fee.	
An increased fee may be allowed in the discretion of the persons determining costs.	

Appendix 19 (Cont'd)

<u>Item</u>	<u>Amount</u>
8. Settlement conference	\$75
This item includes preparation, counsel fee and preparation of memorandum and order.	
An increased fee and a fee to junior counsel may be allowed in the discretion of the person determining costs.	
9. Preparation for hearing, up to	\$350
This item includes correspondence, brief at trial, summoning witnesses and counsel fee on settlement.	
An increased fee may be allowed in the discretion of the person determining costs.	
10. Hearing	
This item includes counsel fee, written argument and attendance to hear judgment.	
The fee to be allowed is in the discretion of the person determining costs. A fee to junior counsel may be allowed in the discretion of the person determining costs.	
11. Order	
To the party having carriage	\$35
To other parties	\$15
This item includes settling and signing an order, whether obtained on default or otherwise, where not included in item 5 or 8.	
Subject to increase, in the discretion of the person determining costs, up to	
	\$100
12. Assessment of costs, up to	\$75

Note

- A. Where for any reason, the services covered by an item were not completed, the fee may be reduced by the person determining costs.

Appendix 19 (Cont'd)

PART II — DISBURSEMENTS

13. Attendance money actually paid to a witness.
14. Fees or expenses actually paid to a court, court reporter, official examiner or sheriff under the regulations under the Administration of Justice Act.
15. For service or attempted service of a document,
 - (a) in Ontario, the amount actually paid, not exceeding the fee payable to a sheriff under the regulations under the Administration of Justice Act;
 - (b) outside Ontario, a reasonable amount;
 - (c) that was ordered to be served by publication, a reasonable amount.
16. For an examination and a transcript of evidence taken on the examination, the amount actually paid, not exceeding the fee payable to an official examiner under the regulations under the Administration of Justice Act.
17. For the preparation of a plan, model, videotape, film or photograph reasonably necessary for the conduct of a proceeding, a reasonable amount.
18. For experts' reports that were supplied to the other parties as required by the Evidence Act or these rules and that were reasonably necessary for the conduct of the proceeding, a reasonable amount.
19. The cost of the investigation and report of the Official Guardian.
20. For an expert who gives opinion evidence at the hearing or whose attendance was reasonably necessary at the hearing, a reasonable amount not exceeding \$350 a day, subject to increase in the discretion of the person determining costs.

Appendix 19 (Cont'd)

21. For an interpreter for services at the hearing or on an examination, a reasonable amount not exceeding \$100 a day, subject to increase in the discretion of the person determining costs.
22. Where ordered by the presiding judge, such travelling and accommodation expenses incurred by a party as, in the discretion of the person determining costs, appear reasonable.
23. For copies of any documents or authorities prepared for or by a party for the use of the court and supplied to the opposite party, a reasonable amount.
24. For copies of records and factums, a reasonable amount.
25. The cost of certified copies of documents such as order, birth, marriage, death certificates, abstracts of title, deeds, mortgage and other registered documents where reasonably necessary for the conduct of the proceeding.
26. The cost of transcripts of proceedings of courts or tribunals,
 - (a) where required by the court or the rules; or
 - (b) where reasonably necessary for the conduct of the proceeding.
27. Where ordered by the presiding judge, for an other disbursement reasonably necessary for the conduct of the proceeding, a reasonable amount in the discretion of the person determining costs.

APPENDIX 20

APPEALS

(Rules of the Court)

RULE 72 – Rules of Civil Procedure

CHILD WELFARE APPEALS

DEFINITION

Section 72.01 In rules 72.02 and 72.03 "Act" means the Child Welfare Act.

APPEALS FROM PROVINCIAL COURT (FAMILY DIVISION)

Section 72.02 Commencement of Appeal —

(1) An appeal from the Provincial Court (Family Division) to the District Court under section 43 or 84 of the Act shall be commenced by serving a notice of appeal (Form 71B), within thirty days after the date of the decision appealed from.

- (a) on the clerk of the Provincial Court (Family Division) in the county or district in which the proceeding was heard;
- (b) on all other persons entitled to appeal the decision; and
- (c) in the case of an appeal under section 43 of the Act, on all other persons entitled to notice of a hearing under subsection 28(7) of the Act who appeared at the hearing.

(2) **Service of Notice of Appeal** – Service under subrule (1) may be made by any method authorized by Rule 16 or by mailing a copy of the notice of appeal to the person to be served, at his or her last known address.

(3) **Filing Notice of Appeal** – The notice of appeal, with proof of service, shall be filed in the office of the local registrar of the District Court within five days after service.

Appendix 20 (Cont'd)

(4) **Grounds to be Stated** - The notice of appeal (Form 71B) shall state the relief sought and shall set out the grounds of appeal, and no other grounds may be argued except by leave of the court.

(5) **Appeal Record** - The record on the appeal shall be the record prepared for the purpose of the appeal under the rules of the Provincial Court (Family Division) by the clerk of the court and sent by him or her for filing with the local registrar of the District Court and shall contain, in the following order,

- (a) a table of contents;
- (b) a copy of the notice of appeal;
- (c) a copy of the decision appealed from, as signed, and the reasons for the decision, if any;
- (d) a transcript of the evidence; and
- (e) such other material that was before the court appealed from as is necessary for the hearing of the appeal.

(6) **Hearing Date** - The appeal shall be heard within thirty days after the filing of the appeal record with the local registrar of the District Court.

(7) **Dispensing with Compliance** - Subject to subsections 43(7) and 84(5) (extension of time for appeal) of the Act, a judge of the District Court may, before or at the hearing of the appeal, dispense with compliance with this rule in whole or in part.

APPEAL FROM UNIFIED FAMILY COURT

Section 72.03

(1) Rules 72.01 and 72.02 apply, with necessary modifications, to an appeal under section 43 or 84 of the Act from the Unified Family Court to the High Court as provided in subsection 46(3) of the **Courts of Justice Act, 1984**.

(2) The appeal shall be heard at Toronto or any other place where a judge of the High Court is available to hear motions.

Note: The Ministry of the Attorney-General has been alerted to the need to amend this Rule to substitute the name of the statute to "The Child and Family Services Act" and the section references to the equivalent provisions of the new statute.

Appendix 20 (Cont'd)

Rule 74 – Rules of The Provincial Court (Family Division)

Rule 74 Within seven days after service on the clerk of a notice of appeal of an order or decision under the Act, the clerk shall send to the local registrar of the District Court,

- (a) a record of the proceedings consisting of,
 - (i) a table of contents,
 - (ii) a copy of the notice of appeal,
 - (iii) a copy of the decision appealed from and any reasons given by the court, and
 - (iv) such other material that was before the court as is necessary for the hearing of the appeal; and
- (b) a certificate of the court reporter stating that the appellant has ordered the transcript of the oral evidence taken in the proceeding.

APPENDIX 21

EXPLANATORY NOTE —

RE: CHILD IN NEED OF PROTECTION DEFINITION

October 30, 1985

MEMORANDUM TO: Regional Directors
Area Managers
Local Managers
Program Supervisors

RE: The Child and Family Services Act -
Definition of a Child in Need of Protection

As you are very much aware, the Child and Family Services Act (CFSA) is the culmination of an extensive consultation process and public hearings. The Standing Committee on Social Development heard many views on a variety of sensitive issues. It deliberated carefully on all aspects of the Act and gave particular consideration to those areas that were the subject of controversy. In fact, the definition of a child in need of protection received the most intense public scrutiny of any provision of the Act. Our task is now to implement the decisions that were made. In this regard, I wanted to write to you personally about an area that was thoroughly debated but continues to be of some concern.

It has come to my attention that there are some people who believe that, in general, it will not be possible under the new legislation for police or child protection workers to apprehend runaway children or children who are working as prostitutes. Although we do not yet have the benefit of court decisions on this matter, it is this Ministry's position that both of the above interpretations are incorrect. In dealing with any matter in the area of child welfare, one must always bear in mind the philosophy and intent behind child protection laws. Child protection legislation must clearly delineate those situations in which problems are serious enough to warrant intervention by the state in order to protect the child.

The CFSA focuses more clearly on specific harms that may befall a child than did the Child Welfare Act (CWA). Numerous specific provisions of the new Act can be applied to runaways. The new definition of a child in need of protection, in essence, includes children who are suffering from physical harm, sexual harm and emotional harm or who are at substantial risk of suffering such harm. In addition, it covers children who are in need of medical treatment or who are under-12 offenders. There is also specific authority to apprehend a child who violates the curfew provision.

These new provisions should be of great assistance to child protection workers and police officers alike in making decisions regarding when to intervene in a situation. The paramount objective of the legislation, as stated in the declaration of principles, is the promotion of the best interests, protection and well-being of children. This principle reflects the Ministry's intention that a broad view be taken of the grounds under which a child may be in need of protection. This principle also supports the Ministry's position that, in the absence of any further evidence, there is a presumption that a runaway or missing child is at substantial risk of physical, sexual or emotional harm and should be apprehended.

Three other points are of particular relevance to the issue of apprehending runaways. First, it is not necessary for a police officer or a child protection worker to be certain that a child fits within the definition of a child in need of protection. It is simply necessary that the officer or worker believes on "reasonable and probable grounds" that the child is in need of protection (S.40(6)). For example, a police officer could apprehend a child if he has reasonable grounds to believe that the child does not have a permanent residence and adequate funds. A child of less than sixteen years of age in these circumstances is likely to be in substantial risk of physical harm or sexual exploitation. Similarly, if a child has been reported by the parents as missing and the child, after being found, refuses to talk to the police officer or gives an explanation of his circumstances that is not credible to the officer, the child could be apprehended.

Second, the CFSA gives the police and child protection workers specific protection from civil liability for action taken in apprehending children (S.40(16)). This provision, in combination with the paramount objective of the Act to protect children, provides a clear basis for police officers to err on the side of apprehending children when in doubt.

Third, contrary to the view of some, the CWA and the CFSA do not give the statutory authority to return a runaway child to the parents following an apprehension, except in two limited situations: curfew violations and where a child under 12 is thought to have committed what would be an offence if he were older. In all other cases, the apprehended child must be taken to a place of safety. With respect to runaways, this requirement implicitly acknowledges that, in many cases, children run away because of an intolerable home situation, which can include physical or sexual abuse of the child. It cannot be automatically assumed that the best place for a runaway child is back in his or her home.

With respect to child prostitutes, the Ministry's position is that there is simply no question that they are covered by the CFSA definition of a child in need of protection. The only reasonable interpretation is that a prostitute under the age of 16 is at substantial risk of sexual exploitation and physical harm. The requirement that the risk must be "substantial" means that it must be real or actual, not illusory. Furthermore, if a police officer knows that a child under age 16 is a prostitute, it is quite likely that he would have reasonable grounds to believe that the child has been sexually exploited. Thus, the officer would not have a rely on "substantial risk" to justify the apprehension.

The conclusion reached by the legislature and the position of this Ministry is that the CFSA represents that delicate balance between the need to protect children from definable harms and the rights of parents and children to be free from unnecessary and unwanted intervention. If everyone working with children works together, I believe that we can provide excellent protection for the children of this province.

As Ministry employees, I very much look forward to your assistance and cooperation and to working with you as we implement this new legislation.



Peter Barnes
Deputy Minister

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

VOLUME 4

CHILD ABUSE REPORTING

UNDER

THE CHILD AND FAMILY SERVICES ACT

December, 1985

THE CHILD AND FAMILY SERVICES ACT TRAINING
HANDBOOK (MARCH 1985) HAS BEEN REVISED
AND CONSOLIDATED WITH REGULATIONS
INTO THE FOLLOWING VOLUMES.

VOLUME 1 FRONT-LINE SERVICE DELIVERY

**VOLUME 2 BOARDS AND SENIOR MANAGEMENT STAFF OF
SERVICE PROVIDERS**

VOLUME 3 CHILD PROTECTION

VOLUME 4 CHILD ABUSE REPORTING

VOLUME 5 SERVICES TO YOUNG OFFENDERS

VOLUME 6 ADOPTION

FOREWORD

The Ministry of Community and Social Services is pleased to produce this revised and consolidated edition of the Child and Family Services Act Training Handbook. Consisting of six volumes (Volumes 3 and 4 being bound together), each is designed to assist service providers in the application of the new Act. The series presents the final revision of the extensive Training Handbook produced during the training program prior to proclamation.

Four of the volumes are complete in themselves and cover the whole of the topic named in the title. Two of the volumes, namely "Front-Line Service Delivery" and "Boards and Senior Management Staff of Service Providers", are more interrelated and there is overlap of subject matter so that material on a specific topic may be found in either one or both of the volumes. The reader may therefore need to consult the two volumes to obtain the complete information.

The principles of the Act are set out in both Volumes 1 and 2. The philosophy behind the Act is fundamental to comprehending the entire Act and readers of all volumes should ensure that they have a thorough understanding of these principles.

This edition is intended as an adjunct and complement to other Ministry publications and manuals that are now available or that will be available in the future. **It is important to remember that the content represents the statute, regulations and other information at the time of writing. Much work on implementation is still in progress and some parts of the Act are still to be proclaimed.**

December, 1985

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1. CLARIFICATION OF THE PUBLIC DUTY TO REPORT A CHILD'S NEED FOR PROTECTION

(1) The Duties

C.F.S.A. s.68(2)

The Child and Family Services Act requires every person who believes on reasonable grounds that a child is or may be in need of protection to immediately report both the belief and the information upon which it is based to a children's aid society.

This is a continuation of predecessor law with clarification that the person must also report the information which led the person to his belief that the child is in need of protection.

(2) What Information Must be Reported

C.F.S.A. s.68(1)

The Child and Family Services Act specifies more precisely than did predecessor legislation the "need of protection" that triggers the reporting duty.

A child who is in any of the following circumstances must be reported to a children's aid society for investigation:

- (a) the child has suffered physical harm, either inflicted by the person having charge of the child or caused by that person's failure to adequately:
 - (i) care and provide for the child,
 - (ii) supervise the child,
 - (iii) protect the child;
- (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in the preceding clause (a);
- (c) the child has been sexually molested or sexually exploited by the person having charge of the child, or by another person where the person having charge of the child:

- (i) knows or should know of the possibility of sexual molestation or sexual exploitation, and
 - (ii) fails to protect the child;
- (d) there is a substantial risk that the child will be sexually molested or sexually exploited as described in the preceding clause (c);
- (e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child:
 - (i) does not provide the treatment, or
 - (ii) refuses to provide the treatment, or
 - (iii) is unavailable to consent to treatment, or
 - (iv) is unable to consent to the treatment;
- (f) the child has suffered emotional harm, demonstrated by:
 - (i) severe anxiety, or
 - (ii) severe depression, or
 - (iii) severe withdrawal, or
 - (iv) severe self-destructive or aggressive behaviour,

and the child's parent or the person having charge of the child

- . does not provide services or treatment to remedy or alleviate the harm,
 - . refuses such services or treatment,
 - . is unable to consent to such services or treatment,
 - . is unavailable to consent to such services or treatment;
- (g) there is a substantial risk that the child will suffer emotional harm of the kind described in the preceding clause (f), and the child's parent or the person having charge of the child:
 - (i) does not provide services or treatment to prevent the harm, or
 - (ii) refuses such services or treatment, or

- (iii) is unavailable to consent to such services or treatment,
 - (iv) is unable to consent to such services or treatment;
- (h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development, and the child's parent or the person having charge of the child either:
 - (i) does not provide treatment to remedy or alleviate the condition, or
 - (ii) refuses to do so, or
 - (iii) is unavailable to consent to treatment, or
 - (iv) is unable to consent to treatment;
- (i)
 - (i) the child has been abandoned, or
 - (ii) the child's parent has died, or
 - (iii) the child's parent is unavailable to exercise his or her custodian rights over the child and has not made adequate provision for the child's care and custody, or
 - (iv) the child is in a residential placement and the parent either refuses or is unable or unwilling to resume the child's care and custody;
- (j) the child is under 12 years of age and has killed or seriously injured another person or caused serious damage to another person's property. Services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child either:
 - (i) does not provide those services or treatment, or
 - (ii) refuses to do so, or
 - (iii) is unavailable to consent to such services or treatment,
 - (iv) is unable to consent to services or treatment;
- (k) the child is under 12 years of age and has on more than one occasion injured another person or caused loss or damage to another person's property, either:
 - (i) with the encouragement of the person having charge of the child, or

- (ii) because of that person's failure to supervise the child adequately, or
- (iii) because of that person's inability to supervise the child adequately.

2. SPECIAL RESPONSIBILITIES IMPOSED ON PROFESSIONALS AND OFFICIALS TO REPORT ABUSE C.F.S.A. s.68(3)

Professional persons and officials are subject to the duty imposed on any member of the public to report a child's need for protection to a society for investigation. However, the Child and Family Services Act recognizes, as did predecessor legislation, the special proximity that persons working with children in a professional or official capacity have to children who may be caught in a situation of abuse. The new legislation gives those persons a particular responsibility.

Thus, a professional or official who, in the course of his duties with respect to a child, has reasonable grounds to suspect that a child:

- a. is abused; or
- b. may be abused; or
- c. may have suffered abuse

must immediately report his suspicion and the information upon which it is based to a children's aid society for investigation. Failure to do so is an offence under the Act.

(1) Professionals Affected

C.F.S.A. s.68(4)

The professional duty to report affects any of the following persons:

- (a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist;
- (b) a teacher, or school principal;

- (c) a social worker or family counsellor;
- (d) a priest, rabbi or clergyman;
- (e) an operator or employee of a day nursery;
- (f) youth and recreation workers (not a volunteer);
- (g) a peace officer and a coroner;
- (h) a solicitor;
- (i) a service provider and an employee of a service provider; and
- (j) any other person who performs professional or official duties with respect to a child.

(2) What Constitutes "Abuse" for the Purpose of this Professional Reporting Duty **C.F.S.A. s.68(1)**

Under the new legislation a child suffers "abuse" in any of the following circumstances:

- (a) the child has suffered physical harm, either inflicted by the person having charge of the child or caused by that person's failure to adequately:
 - (i) care and provide for the child, or
 - (ii) supervise the child, or
 - (iii) protect the child;
- (b) the child has been sexually molested or sexually exploited by the person having charge of the child, or by another person where the person having charge of the child:
 - (i) knows or should know of the possibility of sexual molestation or sexual exploitation, and
 - (ii) fails to protect the child;

(c) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child:

- (i) does not provide the treatment, or
- (ii) refuses to provide the treatment, or
- (iii) is unavailable to consent to treatment, or
- (iv) unable to consent to the treatment;

(d) the child has suffered emotional harm, demonstrated by:

- (i) severe anxiety, or
- (ii) severe depression, or
- (iii) severe withdrawal, or
- (iv) severe self-destructive or aggressive behaviour,

and the child's parent or the person having charge of the child

- (i) does not provide services or treatment to remedy or alleviate the harm,
- (ii) refuses to provide such services or treatment,
- (iii) is unavailable to consent to such services or treatment, or
- (iv) is unable to consent to such services or treatment;

(e) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development, and the child's parent or the person having charge of the child either

- (i) does not provide treatment to remedy or alleviate the condition,
- (ii) refuses to do so,
- (iii) is unavailable or unable to consent to treatment, or
- (iv) is unable to consent to treatment.

(3) Supremacy of the Duty

C.F.S.A. s.68(3)(7)

The professional's duty to report overrides the provisions of any other provincial statute; specifically, provisions that would otherwise prohibit disclosure by the professional or official.

The professional must comply with the reporting laws even though the reported information may be confidential or privileged. The only privilege not subject to the reporting law is that between a solicitor and his client.

(4) Protection from Liability

C.F.S.A. s.68(7)

The Child and Family Services Act continues the protection of predecessor legislation that prohibits any civil action against the person who makes a report of suspected abuse in accordance with the law.

Should a civil action be brought against a person who made a report, he will be protected unless he acted maliciously or without reasonable grounds for his belief or suspicion.

(5) Penalty for Failure to Report

C.F.S.A. s.81(1)2

Failure to report is an offence under the Child and Family Services Act. Any professional or official who fails to report his suspicion of a child's abuse is liable on conviction to a fine of up to \$1,000.

(6) The Essential Goal of the Reporting Duty

C.F.S.A. s.81(1)(b)

The "raison d'etre" of any reporting law is to ensure that a children's aid society is alerted to a child's alleged need for protective intervention so that it may undertake a timely investigation and provide assistance appropriate in the circumstances.

3. PENALTY FOR ABUSE

C.F.S.A. ss.75(1)(2); 81(2)

It continues to be an offence under the Child and Family Services Act for any person having charge of a child:

- a. to inflict abuse on the child; or
- b. by failing to adequately care for or supervise the child:
 - (i) to permit the child to suffer abuse, or

- (ii) to permit the child to suffer from a mental, emotional or developmental condition that could seriously impair the child's development, if not remedied.

A person who contravenes this prohibition commits an offence under the Child and Family Services Act and is liable on conviction to a fine of up to \$2,000. and/or imprisonment for a term of up to 2 years. Any director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is also guilty of this offence.

In order to specify exactly what situations attract this criminal liability, the Child and Family Services Act defines "abuse" to mean a state or condition of being:

- a. physically harmed;
- b. sexually molested; or
- c. sexually exploited.

The court may also in connection with a prosecution arising from this prohibition, proceed as if a protection application had been initiated on the child's behalf.

4. THE PROVINCIAL CHILD ABUSE REGISTER

C.F.S.A. ss.71-73

(1) What is Preserved from Predecessor Legislation

The Child and Family Services Act preserves the following components of the child abuse register from predecessor legislation:

- a. the purpose of the register is to record information reported to and verified by a children's aid society that a child is abused, may be suffering from abuse or may have suffered abuse as defined by the Child and Family Services Act. This includes a child in the care of a children's aid society;

C.F.S.A. s.71(1)(3)(5)

- b. the official in charge of the register's operation is a Ministry employee appointed as a director of the register for that purpose; **C.F.S.A. s.71(2)**
- c. the director maintains the register according to prescriptions set out in the regulations under the Child and Family Services Act; **C.F.S.A. s.71(5)**
- d. the director determines the manner in which information is to be verified by a children's aid society;
- e. no civil action or other proceeding for damages can be instituted against the employee or officer of a society for an act undertaken or intended to fulfil the duties imposed on a society by the reporting provisions, or for an alleged neglect or default of that duty; **C.F.S.A. s.71(4)**
- f. the register must not contain information that has the effect of identifying a person who has reported the child's suspected abuse to a children's aid society, unless the informant is the subject of the report; **C.F.S.A. s.71(5)**
- g. information contained in the register is confidential. Despite the provisions of any other provincial statute and despite Part VIII of the Child and Family Services Act, inspection, removal or alteration of information maintained in the register is prohibited, except as follows:
 - (i) a coroner, for the purpose of an investigation or inquest resulting from a death, may inspect, remove and disclose information contained in the register, **C.F.S.A. s.71(7)(a)**
 - (ii) so may a physician or police officer who has the coroner's written authority, **C.F.S.A. s.71(7)(a)**
 - (iii) the Official Guardian or an agent authorized by him may inspect, remove and disclose register information in accordance with his authority, **C.F.S.A. s.71(7)(b)**
 - (iv) the child or a registered person, either personally or by an agent, may inspect only that information in the register which relates to him/her, **C.F.S.A. s.71(11)**
 - (v) a physician, with the director's written approval, may inspect information in the register specified by the director, **C.F.S.A. s.71(12)**

(vi) the Minister or the director of the register may himself disclose or may permit any of the following persons to inspect and remove information in the register:

- . a Ministry employee,
- . a children's aid society employee,
- . an employee of a recognized child protection agency outside Ontario,
- . a person providing counselling or treatment to a registered person,
- . a person who proposes to provide counselling or treatment to a registered person, **C.F.S.A. s.71(8)(9)**

(vii) the persons above-named may disclose the information:

- . among themselves,
- . to a coroner,
- . to a physician or police officer acting under the coroner's authority,
- . to the Official Guardian or his agent

The director of the register may impose terms and conditions on that disclosure, **C.F.S.A. s.74(7)(8)**

(viii) a person employed in research may inspect and use information contained in the register, provided that person has the written approval of the director of the register and does not use or communicate the information for any purpose except research, academic pursuits or the compilation of statistical data, or communicate any information that may have the effect of identifying a person named in the register, **C.F.S.A. s.71(10)**

(ix) unauthorized disclosure is an offence under the Child and Family Services Act punishable, on conviction, by a fine of up to \$1,000. and/or imprisonment for a term of up to 1 year; **C.F.S.A. s.81(1)(d)**

h. the register cannot be admitted into evidence in a court proceeding except:

- (i) to prove compliance or non-compliance with the Child and Family Services Act requirements for reporting to the director,
- (ii) in a hearing or appeal initiated by the registered person to have the register entry amended or his named removed altogether,
- (iii) in an inquest,

- (iv) in a proceeding initiated by the Official Guardian or a children's aid society if an abused child is in the custody of the society, to recover damages or other compensation for the child;

C.F.S.A. s.71(14)

- i. the director or a Ministry employee acting under his authority must amend the register or remove a name from the register altogether when required by the regulations under the Child and Family Services Act requires;

C.F.S.A. s.71(13)(a)

- j. The director or a Ministry employee acting under his behalf has authority to amend the register to correct an error;

C.F.S.A. s.71(13)(b)

- k. The director must forthwith give written notice to each person referred to in the register entry indicating that:

- (i) the person is identified in the register,
- (ii) the person or the person's solicitor or agent is entitled to inspect the information in the register that refers to or identifies the person, and
- (iii) the person is entitled to request that the director remove the persons name from the register or otherwise amend the entry;

C.F.S.A. s.72 (2)

- l. if the director receives such a request for an amendment of the register entry or the removal of a person's name he has discretion to grant it on his own initiative or alternatively to hold a formal hearing to determine whether the request should be granted or refused. The director may authorize another person to hold the hearing;

C.F.S.A. s.72(3)(4)(5)

- m. If the director intends to determine the person's request by a formal hearing:

- (i) he must give the parties at least 10 days written notice. Parties to a hearing are:

- . the registered person,
- . the society that verified the information referring to or identifying the registered person, and
- . any other person specified by the director,

- (ii) the hearing is governed by the Statutory Powers Procedure Act,
 - (iii) the hearing must be held in the absence of the public. No media representatives are permitted to be present;
- n. if after holding a hearing, the director determines that the information in the register with respect to a registered person is in error or should not be in the register, the director must remove the registered person's name or otherwise amend the register. The director may order that the society's records be amended to reflect the director's decision. Failure of the society to do so is an offence under the Child and Family Services Act, punishable on conviction by a fine of up to \$1,000. and/or imprisonment for up to 1 year;
- o. The director's decision may be appealed to the Divisional Court. The appeal must also be conducted in the absence of both the public and the media;
- p. The record of the director's hearing or an appeal cannot be admitted into evidence in any other proceeding except the prosecution of an offence:
- (i) against a person who is alleged to have breached the confidential nature of the register information,
 - (ii) against the director arising out of an alleged refusal to remove a person's name from the register or otherwise amend the register entry,
 - (iii) against a children's aid society arising out of an alleged refusal to amend the society's records to reflect the director's decision.

(2) What is Substantially New

The Child and Family Services Act clarifies that a "registered person" does not include either:

- a. the child who is the subject of a report; or
- b. the person who makes the report to the children's aid society, unless that person is the subject of the report.

**5. REGULATIONS GOVERNING CHILDREN'S AID SOCIETIES'
INTERACTION WITH THE PROVINCIAL CHILD ABUSE REGISTER**

O. Reg. 551/85

Children's aid society interaction with the provincial child abuse register is prescribed by regulation as follows:

- o A society that receives information under section 68 of the Act concerning the abuse of a child shall enquire of the director who maintains the provincial child abuse register, within 3 days after receiving the information, to determine whether any person referred to in the information has been previously identified in the register.

O. Reg. 551/85, s.2(1)

- o A society that makes a report of verified information concerning the abuse of a child to the director shall make the report within 14 days after the information is verified by the society unless the director extends the period of time.

O. Reg. 551/85, s.2(2)

- o Upon receiving an inquiry from a society, the director shall forthwith notify the society whether any person referred to in the information received by the society has been previously identified in the register, the date of any such prior identification and the society or other agency that reported the prior identification.

O. Reg. 551/85, s.2(3)

- o A report by a society to the director of verified information concerning the abuse of a child shall be in Form 1.

O. Reg. 551/85, s.2(4)

- o Where a case concerning the abuse of a child has been reported by a society and the case is not closed by the society, the society shall make a further report in Form 2 to the director within 4 months after making of the original report.

O. Reg. 551/85, s.2(5)

- o Where a case is not closed, a society shall make a subsequent report to the director in Form 2 on each anniversary of the original report until the case is closed by the society.

O. Reg. 551/85, s.2(6)

- o A society shall not close a case concerning the abuse of a child reported to the register by the society until the treatment or prevention of the abuse is no longer the primary objective of the society's involvement with the family. **O. Reg. 551/85, s.2(7)**
- o A society may close a case concerning the abuse of a child where the case has been referred to another society or to a child protection agency recognized by a jurisdiction outside of Ontario. **O. Reg. 551/85, s.2(8)**
- o The director shall record information reported to the register in Form 3. **O. Reg. 551/85, s.3(1)**
- o The director shall maintain information in the register for at least 25 years unless the information has been previously expunged or amended pursuant to a decision by the director. **O. Reg. 551/85, s.3(2)**

